

DBPLCHE1

Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 Cv. 0691 (LAK)

6 STEVEN R. DONZIGER, et al.,

7 Defendants.

8 -----x

November 25, 2013
9:39 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN

District Judge

12 APPEARANCES

13 GIBSON, DUNN & CRUTCHER LLP
14 Attorneys for Plaintiff

15 BY: RANDY M. MASTRO
16 ANDREA E. NEUMAN
REED M. BRODSKY
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Attorneys for Donziger Defendants
18 BY: RICHARD H. FRIEDMAN
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19 LITTLEPAGE BOOTH
20 Attorneys for Donziger Defendants
21 BY: ZOE LITTLEPAGE
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22 GOMEZ LLC
Attorneys for Defendants Hugo Camacho, Javier Piaguaje
23 BY: JULIO C. GOMEZ

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1 (Trial resumed)

2 THE COURT: Good morning, everyone.

3 MS. NEUMAN: Good morning, your Honor.

4 THE COURT: Okay. Let's proceed.

5 MR. GOMEZ: Your Honor, defendants call Humberto
6 Piaguaje. I'll go get him, your Honor.

7 HUMBERTO PIAGUAJE,

8 called as a witness by the Defendants,

9 having been duly sworn, testified through the Spanish

10 interpreters, Jesus Rivera and Elisa Cabal, as follows:

11 DIRECT EXAMINATION

12 BY MR. GOMEZ:

13 Q. Good morning, Mr. Piaguaje.

14 A. Good morning.

15 MR. GOMEZ: Your Honor, may I approach?

16 THE COURT: You may.

17 Q. Mr. Piaguaje, I have handed you the document that has been
18 marked as Defendant's Exhibit 1900.

19 Do you have that in front of you, sir?

20 A. Yes.

21 Q. Do you recognize that document?

22 A. Yes, sir.

23 Q. Would you please state what it is?

24 A. It is my testimony.

25 Q. Would you please turn to the page 10 of that document in

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1 Spanish.

2 A. Yes, I have it.

3 Q. Is your signature there?

4 A. Yes, I recognize my signature.

5 Q. Sir, did you review this document before you signed it?

6 A. Yes, sir.

7 Q. Was everything true and accurate in this document when you
8 signed it?

9 A. Yes.

10 Q. And to the best of your knowledge, is everything stated in
11 that document still true and accurate today?

12 A. Yes.

13 MR. GOMEZ: Your Honor, I pass the witness.

14 THE COURT: Are you offering the testimony?

15 MR. GOMEZ: Yes. I offer Defendant's Exhibit 1900,
16 your Honor.

17 THE COURT: All right.

18 MS. NEUMAN: Your Honor, we had objections to
19 Mr. Piaguaje's testimony, which we put in in a written form
20 last night. We didn't receive the signed statement until last
21 night.

22 THE COURT: I haven't seen them. Do you have them
23 with you?

24 MS. NEUMAN: We can get copies, your Honor. The
25 primary objections are to paragraphs 15 through 22, which

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1 purport to discuss environmental conditions which are of no
2 relevance in this matter. They also, Mr. Piaguaje goes on to
3 also purport to describe the decision-making process of the
4 asamblea, namely at paragraphs 29, 30, 31, 33, 35, and 39
5 through 40. And then he purports to speak in a representative
6 capacity on behalf of that organization and make legal and
7 other conclusions in paragraphs 41 through 49.

8 THE COURT: Mr. Gomez, do you want to address them?

9 Are there others in whatever you filed, Ms. Neuman?

10 MS. NEUMAN: Yes. Those are the primary paragraphs,
11 your Honor. We do have a few others where we object to certain
12 phrases in other paragraphs.

13 THE COURT: We'll deal with that later. It may be
14 possible to deal with this now.

15 MR. GOMEZ: Your Honor, I have not had an opportunity
16 to review the papers filed this morning yet. But I will say
17 that with respect to, with respect to the paragraphs 15 to 22,
18 they're not offered for the truth. They're offered to
19 demonstrate the witness's state of mind and his participation
20 over the course of a long period of time. As the testimony
21 states, Mr. Piaguaje has testified that he has participated and
22 is one of the leaders and activists of the grassroots movement
23 which resulted in the asamblea and has essentially served as
24 the client representative for the 30,000 indigenous people.

25 THE COURT: None of that is in paragraphs 15 to 22.

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1 MR. GOMEZ: The paragraphs 15 and 22 speak to good
2 faith belief in the validity of the suit that Mr. Piaguaje
3 possesses and that is at issue in this case.

4 In terms of --

5 THE COURT: Anything else on those paragraphs?

6 MR. GOMEZ: No, your Honor.

7 THE COURT: The objection is sustained as to
8 paragraphs 15 to 21, entirely irrelevant to this case.

9 Now let's go on to the next group.

10 MR. GOMEZ: With respect to paragraphs speaking to the
11 decision-making of the asamblea, Mr. Piaguaje has testified
12 that he has served as leader of the movement which became known
13 as the asamblea in 2001. He's been involved since 1994. He
14 then held various positions in the asamblea from 2001 to
15 present.

16 The name of the asamblea changed to the union in 2012,
17 and he is its current chief executive or president of the
18 union. He has personal knowledge of most of the meetings of
19 the asamblea, participated in them, was present for the
20 resolutions that were voted upon, and is more than qualified to
21 speak about the decision-making process and the resolutions and
22 decisions that were made when he was president.

23 Paragraph 6 and 7 speak to the time periods of his
24 involvement.

25 THE COURT: I understand that.

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1 MR. GOMEZ: And the exhibits that are cited throughout
2 his witness statement all mention or make reference to
3 Mr. Piaguaje being present during these particular meetings.

4 THE COURT: Well, we weren't talking about this
5 subject at the moment, at least I didn't think we were.

6 The objection to paragraphs 42 and 43 are sustained
7 both on grounds of relevance and on the ground of the witness's
8 lack of competence to testify as to what the intention of a
9 collectivity of many people may have been at various times.

10 Paragraph 49, the objection is sustained both because
11 it's a statement as to the collective intention of a large
12 group of people and it is also irrelevant.

13 And let's go to the remaining paragraphs.

14 The objection to paragraph 35 is sustained. Once
15 again, it purports to be a statement as to the collective
16 intentions of a large number of people as to which this witness
17 can't possibly be competent.

18 The objection to paragraph 40 is sustained. It's
19 completely irrelevant.

20 And so those rulings I make now. I will reserve
21 judgment as to the other points raised by the papers Chevron
22 filed, to which, Mr. Gomez, of course, you may respond. But I
23 thought it important to rule on those to keep the
24 cross-examination within some reasonable semblance of material
25 relevant to the case.

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1 Okay. Ms. Neuman.

2 MS. NEUMAN: Thank you, your Honor.

3 THE COURT: So the statement is received subject to
4 the remaining objections and exclusive of those paragraphs as
5 to which I've sustained objections.

6 Okay. Sorry to interrupt.

7 (Defendant's Exhibit 1900 received in evidence)

8 CROSS-EXAMINATION

9 BY MS. NEUMAN:

10 Q. Good morning, Mr. Piaguaje.

11 A. Good morning.

12 Q. When did you arrive in New York, sir?

13 A. On Friday.

14 Q. On how many occasions have you previously been to New York?

15 A. Many times, around seven times I recall being here.

16 Q. And were all your trips to New York in connection with the
17 Ecuador litigation, the Lago Agrio litigation?

18 A. Yes.

19 Q. You have a graduate degree, sir; is that right?

20 A. I don't know about graduate degree, but I do have a degree
21 as a technologist, yes.

22 Q. And you speak three languages; is that correct?

23 A. Yes.

24 Q. Have you traveled internationally in support of the Ecuador
25 litigation to countries other than the United States?

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1 A. To testify in other countries, yes.

2 Q. How many countries would you say you traveled to in support
3 of the litigation?

4 A. I've traveled to Norway, to England, and Switzerland.

5 Q. And you're currently supporting the ongoing efforts to
6 enforce the Lago Agrio judgment; is that right?

7 A. Yes.

8 Q. And the asamblea, which you referred to in your direct
9 testimony, that also supports the efforts to enforce the
10 judgment taking place abroad; is that right?

11 A. Yes.

12 Q. Now are you currently a 40 percent shareholder in Selva
13 Viva?

14 A. Yes. But I must clarify that represents not just myself
15 but that's also in representation of my indigenous nation, the
16 Siekopai. And I must say that Selva Viva deals exclusively
17 with the handling of money and also with technical and legal
18 issues in Ecuador.

19 Q. Is your ownership share in Selva Viva held in your own name
20 or held in the same of some other organization?

21 A. Selva Viva is represented by other organizations such as
22 Amazon Defense Front, which represents the settlers, Ermel
23 Chavez. There is Toribio Aguinda, the colleague of the Cofan
24 nation who represents the Cofan nation. And myself, Humberto
25 Piaguaje, I represent the Siekopai nation.

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1 Q. And is your 40 percent interest held in your own name or is
2 it held in the name of the Siekopai in Selva Viva?

3 A. In my name, Humberto Piaguaje.

4 Q. You're not one of the 48 named plaintiffs in the *Aguinda v.*
5 *Chevron* Lago Agrio case, correct?

6 A. I am not a signatory, but I am an affected party in this
7 lawsuit.

8 Q. But you're not a named plaintiff, right, sir?

9 A. No.

10 Q. You're currently executive coordinator of the *asamblea*; is
11 that correct?

12 A. I am executive coordinator of the union of those affected
13 by Texaco, by Texaco's operations.

14 Q. But you cannot speak on behalf of the *asamblea*, correct?

15 A. On behalf of the assembly, but within the union I can
16 speak. I am, I represent the union of the affected.

17 Q. So you cannot speak on behalf of the *asamblea*, but you can
18 speak on behalf of the union; is that your testimony?

19 A. On behalf of the assembly, I want to explain to you why.

20 THE COURT: Excuse me, sir, could we just start by
21 answering the question and then possibly an explanation.

22 THE WITNESS: Very well.

23 THE COURT: Try again, Ms. Neuman.

24 MS. NEUMAN: Thank you, your Honor.

25 Q. Is it accurate, Mr. Piaguaje, that you cannot speak on

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1 behalf of the asamblea?

2 A. I represent the assembly because I am elected within
3 assembly that represents the union of those affected.

4 Q. Have you testified, Mr. Piaguaje, that you cannot speak on
5 behalf of the asamblea?

6 A. Could you please repeat the question?

7 Q. Yes. Have you testified, sir, that you cannot speak on
8 behalf of the asamblea?

9 A. Is the question have I testified elsewhere or at this
10 moment, is that the question?

11 Q. Did you testify to that on Saturday?

12 A. Yes.

13 Q. The assembly did not become a legal entity in Ecuador until
14 January of 2011, correct?

15 A. That's true. The assembly of the Afectados was a de facto
16 society until it was constituted as a union of the Afectados in
17 2012.

18 Q. And the assembly has never had a meeting with the 47 named
19 plaintiffs in the Lago Agrio case, correct?

20 A. We have never had a meeting with the -- with the named
21 plaintiffs or the signing plaintiffs.

22 Q. And there's no written agreement between the named
23 plaintiffs and the asamblea, correct?

24 A. There is no written document, but they, by association, the
25 47 named plaintiffs represent associations of those affected.

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1 MS. NEUMAN: Move to strike everything after document,
2 your Honor, as nonresponsive.

3 THE COURT: Granted.

4 Q. Mr. Piaguaje, there's no written -- withdrawn.

5 The 48 plaintiffs have never executed any document
6 giving the asamblea control of the Lago Agrio litigation,
7 correct?

8 A. Please I request that you repeat the question.

9 MS. NEUMAN: Could the court reporter read the
10 question back.

11 (Record read)

12 A. Yes, there are documents that grant that for the
13 enforcement process.

14 MS. NEUMAN: For impeachment, your Honor, I would
15 offer from the November 23, 2013 transcript of Mr. Piaguaje's
16 deposition page 42, lines 4 through 12:

17 "Q. Now I want to talk about the relationship between the 48
18 plaintiffs, the people whose names are on the complaint in
19 Ecuador, and the asamblea. Have the 48 plaintiffs ever signed
20 a document giving the asamblea control of the litigation in
21 Ecuador?"

22 THE COURT: You're going too fast, Ms. Neuman.

23 MS. NEUMAN: I apologize. Starting at line 4:

24 "Q. Now I want to talk about the relationship between the 48
25 named plaintiffs, the people whose names are on the complaint

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1 in Ecuador, and the asamblea. Have the 48 named plaintiffs
2 ever signed a document giving the asamblea control of the
3 litigation in Ecuador?

4 "A. No, I don't believe so. I don't recall."

5 Was that testimony true when you gave it on Saturday,
6 Mr. Piaguaje?

7 MR. GOMEZ: Objection, your Honor. It's not proper
8 impeachment. The witness qualified his response with respect
9 to enforcement and the transcript speaks to his belief at the
10 time and his recollection at the time. It's not definitive.

11 THE COURT: It's offered as substantive evidence, is
12 it?

13 MS. NEUMAN: I believe it's substantive evidence and
14 impeachment, your Honor.

15 THE COURT: Objection overruled.

16 Q. Mr. Piaguaje, in the Lago Agrio litigation, the lawyers,
17 Mr. Fajardo and others, make the tactical decisions in the
18 case, correct?

19 A. As a legal team, that is carrying out everything that has
20 to do with the tactical legal strategy of the case, they are in
21 charge of doing all the legal issues.

22 Q. And you're not aware to what extent Mr. Donziger worked
23 with the Ecuadorian legal team to determine litigation
24 strategy, correct?

25 A. Yes. And I must clarify that Mr. Donziger was more

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1 involved or was more often in Ecuador when the case was here in
2 the United States. But when the court transferred the case to
3 Ecuador upon Chevron's request, he was no longer a litigating
4 attorney because by that time, there were Ecuadorian attorneys
5 in Ecuador.

6 Q. So is it your testimony, Mr. Piaguaje, that Mr. Donziger
7 visited Ecuador more frequently between 1993 and 2003 than he
8 did between 2003 and the present?

9 A. Yes, that's what I am saying because when the case was
10 taking place, he was there.

11 Q. And if Mr. Donziger visited Ecuador at least once a month
12 between 2003 and 2013, you were unaware of that; is that right?

13 A. He would visit when he was doing coordinating work with the
14 legal teams, also when we would call him so he could inform
15 regarding the strategic work and communication work and the
16 strategic work.

17 Q. Mr. Donziger did political work in Ecuador?

18 A. No.

19 Q. Where was Mr. Donziger doing his political work?

20 A. I did not understand.

21 Q. You testified that Mr. Donziger did political work, right?

22 A. Political, it's more the strategic work of carrying out the
23 case. What I mean is that the attorneys in the United States
24 in their work with the Ecuadorian attorneys were carrying out
25 work that had to do with motions, motions that I as being in

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1 the assembly cannot talk about.

2 MS. NEUMAN: Move to strike as nonresponsive, your
3 Honor.

4 THE COURT: The portion that starts with the phrase
5 "what I mean" is stricken as nonresponsive.

6 Q. Mr. Piaguaje, you do not know how much Mr. Donziger worked
7 with the Ecuadorian legal team to determine litigation
8 strategy, correct?

9 A. I recall that he started working he would say when the case
10 was in the United States. But when the case was in Ecuador,
11 but then it was the work was exclusively done by the Ecuadorian
12 attorneys.

13 MS. NEUMAN: For impeachment, your Honor, I would
14 offer Mr. Piaguaje's testimony from Saturday, page 114, lines
15 16, through page 115, line 5:

16 "Q. So you don't know how much he -- referring to
17 Mr. Donziger -- worked with the Ecuadorian legal team to
18 determine litigation, for example?

19 "A. I don't know because perhaps, because I am located in
20 Sucumbios, and Selva Viva as a technical entity is in Quito.

21 "Q. Were you aware that Mr. Donziger went to Ecuador at least
22 once a month the entire time the case was pending in Ecuador to
23 work with the Ecuadorian lawyers?

24 "A. No."

25 MR. GOMEZ: Your Honor, on the impeachment, first of

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1 all, there are two objections there, there were no rulings upon
2 by the special master nor requests by Chevron to seek a ruling
3 by the special master. Those objections as to vagueness to the
4 first and as to speculative to the second have not been ruled
5 upon.

6 THE COURT: Both of those are now ruled upon. They're
7 overruled.

8 Now, are you offering this?

9 MS. NEUMAN: Yes.

10 Q. Mr. Piaguaje, was this testimony truthful when you gave it
11 on Saturday?

12 A. On Saturday what I told you, and I don't know if I
13 understood, but, yes, on Saturday I told you the truth.

14 Q. You mentioned the FDA, that is a colonos organization,
15 correct?

16 A. The Amazon Defense Front, yes, it is an entity that
17 exclusively represents colonos or settlers.

18 Q. I want to return to the asamblea. The asamblea has
19 meetings and it maintains minutes of those meetings, correct?

20 A. Correct.

21 Q. And to the extent those minutes include statements by
22 people made during the meeting, the minutes accurately reflect
23 those statements; is that true?

24 A. Sometimes before starting our meeting, there's a reading
25 done of the previous meeting. The reading is made and it is

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1 what has been talked about is corrected. Once it has been read
2 and if all of us are in agreement, then it is approved by the
3 assembly.

4 Q. And pursuant to that process, the final minutes to the
5 extent they include statements made by people during the
6 meetings accurately reflect those statements, correct?

7 A. Yes.

8 Q. You have produced some of the asamblea minute meetings but
9 not all of them; is that true?

10 A. Yes.

11 Q. Did Mr. Fajardo assist you in selecting which of the
12 asamblea minutes to produce?

13 A. The most important ones which we believed that we had to
14 produce, yes.

15 Q. And the "we" is you and Mr. Fajardo; is that right?

16 A. It could be as a team, teamwork including legal team,
17 technical team, the political and organizational team,
18 including the union of the Afectados which I represent.

19 MS. NEUMAN: Move to strike as nonresponsive, your
20 Honor.

21 THE COURT: Well, he said a mouthful.

22 MR. GOMEZ: Your Honor, he's trying answer the
23 question as to who he's referring to.

24 THE COURT: I never met a lawyer who, when faced with
25 a motion like that, who didn't say the witness was trying to

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1 answer the question. Possibly he was and possibly he wasn't.
2 Maybe I'll decide that some day, but it certainly wasn't a
3 crisp, clear answer.

4 So I'll let the answer stand and Ms. Neuman may pursue
5 it.

6 MS. NEUMAN: Thank you, your Honor.

7 Q. Mr. Piaguaje, with regard to the minutes that you produced
8 in this action, did Mr. Fajardo assist in the selection of
9 those minutes?

10 A. I didn't see it, but all the same, I imagine these are
11 documents that were chosen because I'm not involved in the
12 management.

13 Q. The minutes that were produced in this action, you're not
14 the person that selected those minutes for production?

15 A. I did not personally, not I.

16 Q. And do you know who personally did select those minutes for
17 production?

18 A. I cannot confirm it because I didn't see that.

19 Q. Now, you're familiar with Hugo Camacho, a plaintiff in the
20 Lago Agrio case?

21 A. Yes.

22 Q. If Mr. Camacho wanted to get copies of the asamblea meeting
23 minutes, he could do that, correct?

24 A. He can do so as long as that has been authorized by the
25 assembly.

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1 Q. Mr. Camacho never requested a copy of the assembly minutes
2 to your knowledge, did he?

3 A. I'm not aware regarding the legal process because everyone
4 has his own attorney who can advise him and I don't know that.

5 Q. You don't have any information of Mr. Camacho ever asking
6 for a copy of the asamblea's minutes?

7 A. I don't know that.

8 Q. And you don't have any information that Mr. Javier Piaguaje
9 ever requested a copy of the asamblea's minutes, correct?

10 A. No.

11 Q. Mr. Javier Piaguaje is related to you, sir?

12 A. There's some relationship but it's not -- it's not a
13 familial link.

14 Q. You know who Mr. Javier Piaguaje is?

15 A. Yes, ma'am.

16 Q. The minutes for the asamblea are kept in the Selva Viva
17 offices, correct?

18 A. Yes.

19 Q. And there are lots of other documents related to litigation
20 that are kept in that office as well?

21 A. Yes.

22 Q. Do you have access to those documents, the documents in the
23 Selva Viva offices?

24 A. There are quite a lot of documents and I don't have easy
25 access to that.

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1 Q. Have you ever been denied access to any Selva Viva
2 documents that you wanted to see?

3 A. I have not attempted to -- excuse me. I have not requested
4 documents. We believe that those are technical and legal
5 documents and it's not our custom to request documents.

6 MR. GOMEZ: Objection to the translation.

7 THE COURT: Mr. Interpreter, consult with counsel
8 about the translation.

9 And, Ms. Neuman, you may want to inquire as to what he
10 means by "documents."

11 MS. NEUMAN: Yes, your Honor.

12 (Pause)

13 MR. GOMEZ: I withdraw the objection.

14 THE COURT: All right.

15 Q. Mr. Piaguaje, when you say there were technical and legal
16 documents that it's not your custom to request, what documents
17 are you referring to?

18 A. I'm referring to the documents that are part of the
19 litigation of the trial that was heard in Ecuador.

20 MS. NEUMAN: May I approach, your Honor?

21 THE COURT: Yes.

22 MS. NEUMAN: Hand the witness what's marked PX7000.

23 THE COURT: Before we go to that, Mr. Piaguaje, when
24 you referred a few moments ago to documents at the Selva Viva
25 office, were you referring to documents on paper?

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1 THE WITNESS: Yes.

2 THE COURT: Thank you.

3 Go ahead, Ms. Neuman.

4 MS. NEUMAN: Thank you, your Honor.

5 Q. Can you estimate the amount of paper documents that are
6 kept at Selva Viva, is it a whole roomful?

7 A. There is a roomful, but there's also any number. I don't
8 know because there are so many.

9 Q. Mr. Piaguaje, do you have Plaintiff's Exhibit 7000 in front
10 of you, sir, do you have that document there?

11 A. Yes.

12 Q. Plaintiff's Exhibit 7000 is a subpoena signed on
13 November 10, 2013.

14 Did you ever receive a copy of this subpoena while you
15 were still in Ecuador?

16 A. No.

17 Q. And is it accurate that you had never seen Plaintiff's
18 Exhibit 7000 before your deposition that took place this
19 weekend?

20 A. No.

21 THE COURT: I'm sorry. The question was is it
22 accurate, so the answer in that context introduces a certain
23 ambiguity, don't you think?

24 MS. NEUMAN: Yes, your Honor.

25 Q. You never saw Plaintiff's Exhibit 7000 prior to your

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1 deposition, correct, Mr. Piaguaje?

2 A. No.

3 THE COURT: Same problem.

4 MS. NEUMAN: Yes, your Honor. I'll rephrase.

5 Q. Had you ever seen Plaintiff's Exhibit 7000 prior to your
6 deposition?

7 A. I saw it on Saturday.

8 Q. And that was the first time you saw it, correct?

9 A. That's right.

10 Q. And you have documents that you have written to Steven
11 Donziger in your possession, either hard copy documents or
12 emails; is that right?

13 A. Yes, I remember I did write them via internet, but
14 physically I don't have them.

15 Q. Do you have Mr. Donziger's email address?

16 A. Yes.

17 Q. And you've exchanged email correspondence with
18 Mr. Donziger?

19 A. For matters of communication to invite to the meetings,
20 yes. But regarding the process, the litigation, and other
21 motions, no.

22 Q. Have you ever searched your email account, Mr. Piaguaje, to
23 see how much correspondence you have with Mr. Donziger?

24 A. No.

25 Q. Do you have email communications with Mr. Fajardo?

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1 A. Yes.

2 Q. Do you have email communications with Mr. Yanza?

3 A. Yes.

4 Q. Do you view the Lago Agrio litigation as a collective
5 action, sir?

6 A. Yes.

7 Q. You mentioned inviting Mr. Donziger to asamblea meetings.

8 On how many occasions have you invited Mr. Donziger to
9 the asamblea meetings?

10 A. I remember inviting him twice.

11 (Continued on next page)

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H. Piaguaje - cross

1 Q. Did he go to the meetings on both occasions you invited
2 him?

3 A. He came at the third invitation, if I am not mistaken, in
4 the month of January.

5 Q. January of 2013?

6 A. Yes.

7 Q. Am I understanding you correctly that you invited him three
8 times before he actually came?

9 A. I made reference to the first two when he did not come,
10 then the third one when he did.

11 Q. Now, when Mr. Donziger -- let me withdraw that.

12 When Mr. Donziger did come to the asamblea meeting in
13 2013, he reported that over \$25 million had been raised for the
14 litigation after Mr. Kohn had stopped funding, correct?

15 MR. GOMEZ: Objection.

16 THE COURT: Basis.

17 MR. GOMEZ: This matter is one that we consider to be
18 attorney-client privilege. We understand that the Court has
19 reviewed minutes of this meeting in camera and has ruled to
20 overrule the objection. We simply want to preserve the record.

21 THE COURT: You have done so, to whatever extent that
22 does it.

23 The objection is overruled.

24 A. Please repeat.

25 Q. When Mr. Donziger came to the asamblea meeting in January

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H. Piaguaje - cross

1 of 2013, he reported that over \$25 million had been raised for
2 litigation after Mr. Kohn had stopped funding, is that right?

3 A. He didn't report that, but he did give an accounting of the
4 activities that he was involved in, given that they were of
5 interest to us, because it was of interest to us to know if he
6 was truly acting in the interests of the team throughout the
7 entire litigation process.

8 Q. You don't recall Mr. Donziger reporting that \$25 million
9 had been raised to fund the litigation?

10 A. He did not inform us of the amount, but he did make
11 reference to the efforts to raise funds for the struggle that
12 we are involved in.

13 MS. NEUMAN: May I approach the witness, your Honor?

14 THE COURT: You may.

15 MS. NEUMAN: I am going to hand him a document that
16 has been marked as Plaintiff's Exhibit 7033A.

17 Q. Mr. Piaguaje, can you turn to the last page of Exhibit
18 7033A?

19 A. Yes.

20 Q. Is that your signature that appears above Humberto
21 Piaguaje, coordinator?

22 A. Yes.

23 Q. Did you sign these minutes after reviewing and approving
24 them?

25 A. Yes.

DBP8CHE2

H. Piaguaje - cross

1 Q. Can you turn to the second page of the minutes, the Spanish
2 section of the document?

3 A. Yes.

4 Q. Do you see halfway down the paragraph that begins "Mr.
5 Donziger continues," where it says "since that time
6 approximately 25 million has come in"?

7 A. Yes.

8 Q. Does that refresh your recollection that Mr. Donziger
9 reported the raising of \$25 million to finance the litigation
10 to the asamblea?

11 A. It does remind me somewhat, but it is confirmed in the
12 document.

13 Q. Thank you, sir.

14 Is the asamblea currently represented by 12 law firms?

15 A. I don't recall.

16 Q. The money that has been provided to finance the litigation,
17 the asamblea has never demanded control of that money, is that
18 true?

19 A. As far as the handling of the litigation, the assembly of
20 the affected, we never make decisions. We believe that that is
21 why there is a legal team who planned the work according to the
22 legal work and the motions that they consider proper.

23 Q. The asamblea has never received any of the millions of
24 dollars that have been invested in the litigation, correct?

25 A. The asamblea has received only what belongs to the

DBP8CHE2

H. Piaguaje - cross

1 management of payments, of technical and legal payments.

2 Q. Is it your testimony that the asamblea has received money
3 from the funders of the litigation?

4 A. It's through Selva Viva, that is where the funds go to, not
5 to the asamblea.

6 Q. All the funds -- let me withdraw that.

7 The asamblea has never demanded to take over control
8 of the money from Selva Viva, correct?

9 A. Well, as the asamblea, we provide the guidance as to where
10 the funds should go. They have to go directly to the work that
11 is considered for legal purposes. So we do not know exactly
12 the needs and the administration that the attorneys may have.

13 Q. The asamblea has not received any accountings as to how the
14 millions of dollars that funders have put into the case have
15 been spent, correct?

16 A. No.

17 Q. No, you have never received an accounting?

18 A. We have not received any detail as to those moneys, but we
19 do have knowledge of the team that the funds were directed to,
20 for example, communications, legal, and technical activities.

21 Q. Have you repeatedly requested accountings as to how the
22 money was spent from Mr. Donziger?

23 A. We have requested specifically the one that he delivered
24 about how the money was being used.

25 Q. You're saying Mr. Donziger gave you an accounting in

DBP8CHE2

H. Piaguaje - cross

1 writing?

2 A. I remember that at that time he was putting something up on
3 the screen, but I don't know if he left all that documentation
4 there. I don't recall that very well.

5 MS. NEUMAN: For impeachment, your Honor, I would
6 offer deposition transcript of Mr. Piaguaje starting at page
7 117, line 24, through page 118, line 10.

8 "Q. Has Mr. Donziger ever given the assembly a detailed
9 accounting in writing?

10 "A. No. And for that same reason, it's why we brought it to
11 his attention.

12 "Q. And since you brought it to his attention, has he given
13 you a detailed accounting for where all the millions have gone
14 in writing?

15 "A. No. He didn't give us one. And for that same reason, we
16 also had to terminate his functions."

17 MR. GOMEZ: Once again, the deposition testimony is
18 not inconsistent with the witness's testimony.

19 THE COURT: Overruled.

20 Q. Mr. Piaguaje, was that testimony true and accurate when you
21 gave it on Saturday?

22 A. It is true because we also took action because of Mr.
23 Donziger's attitude.

24 Q. Do you know who Russell Deleon is, Mr. Piaguaje?

25 A. No.

DBP8CHE2

H. Piaguaje - cross

1 Q. Have you ever heard of a company called Torvia?

2 A. No.

3 Q. Have you ever heard of a company called Burford?

4 A. No.

5 Q. You are aware, Mr. Piaguaje, that the funders of the Lago
6 Agrio litigation made the decision that any money collected on
7 the judgment would go to a company in Gibraltar, correct?

8 A. Yes.

9 Q. And the asamblea agreed that any money collected on the
10 judgment would go into a company set up in Gibraltar?

11 A. Yes.

12 Q. Is Mr. Fajardo on the board of the Gibraltar company?

13 A. Yes.

14 Q. Is Mr. Yanza on the board of the Gibraltar company?

15 A. Yes.

16 Q. Do you know Joseph Kohn?

17 A. Yes.

18 Q. Mr. Kohn funded the Lago Agrio litigation for many years?

19 A. Yes.

20 Q. In the fall of 2009, Mr. Kohn stopped funding the case. Do
21 you recall that?

22 A. Yes.

23 Q. And that was a problem for the litigation?

24 A. Yes.

25 Q. Now, you personally met with Mr. Kohn in Philadelphia in

DBP8CHE2

H. Piaguaje - cross

1 April 2010, is that right?

2 A. Yes.

3 Q. Did you discuss with him at that time the need for him to
4 continue to fund the case?

5 A. There were agreements. We had set certain guidelines that
6 he was to abide by. And before that, also, we had recommended
7 all of this, that the decisions of the assembly be taken into
8 account and not just independent actions by the attorneys.

9 Q. Did you discuss with Mr. Kohn in that meeting needing
10 funding for the case in April of 2010?

11 A. Well, there were many subjects. It was not only about
12 money. And I don't recall exactly what the conversation was at
13 this moment, but it was more about the conflicts regarding the
14 decisions that he made that were above the interests of the
15 members of the assembly for the struggle that they were
16 involved in.

17 MS. NEUMAN: For impeachment, I would offer deposition
18 testimony transcript page 72, lines 15, through page 73, line
19 2.

20 "Q. The in-person meeting that you had with Mr. Kohn in
21 Philadelphia in 2010, what topics were discussed at that
22 meeting?

23 "A. We talked about, about the good relationship that has to
24 exist above anything else between Donziger and Joe Kohn, above
25 all teamwork. And we also talked about he has to continue with

DBP8CHE2

H. Piaguaje - cross

1 the financing, and not leave it after three or four months, but
2 to continue with it based on what was talked about. So that's
3 what we agreed on with him."

4 MR. GOMEZ: Once again, no inconsistency between the
5 testimony given here and the testimony given in the deposition.

6 THE COURT: Ms. Neuman, what about it?

7 MS. NEUMAN: I asked him twice if a topic of the
8 meetings was the need for Mr. Kohn to continue funding the
9 litigation, and he gave two fairly unresponsive answers, and he
10 certainly didn't admit that that was a topic or acknowledge
11 that was a topic in either answer.

12 THE COURT: You can go back and try to pin him down,
13 and then if you can't, you can try again.

14 Sustained for the moment.

15 BY MS. NEUMAN:

16 Q. Mr. Piaguaje, in your April 2010 meeting with Mr. Kohn, did
17 you talk about the fact that he has to continue with the
18 financing of the litigation?

19 A. Yes.

20 Q. And was it after your April 2010 meeting with Mr. Kohn that
21 you sent a letter indicating the asamblea was terminating his
22 services?

23 A. Correct. Because he did not abide by some of the things
24 that had been suggested at the meeting.

25 Q. At no time prior to 2010 had the asamblea decided to

DBP8CHE2

H. Piaguaje - cross

1 terminate Mr. Kohn, correct?

2 A. No.

3 Q. The asamblea first made that decision in 2010?

4 A. Are you talking about previously? Are you talking about
5 the same attorney?

6 Q. Yes. Mr. Kohn. You first decided to terminate him in
7 2010?

8 A. Yes.

9 Q. Do you recall receiving a letter from Mr. Kohn in August of
10 2010?

11 A. I don't recall.

12 MS. NEUMAN: For impeachment, your Honor, I would
13 offer Mr. Piaguaje's deposition testimony at page 76, lines 22
14 to 25.

15 "Q. Do you recall, Mr. Piaguaje, receiving a letter from Joe
16 Kohn on or about August 9th of 2010?

17 "A. Yes, I do recall."

18 Q. Was that testimony accurate when you gave it on Saturday,
19 Mr. Piaguaje?

20 MR. GOMEZ: Objection to this impeachment. At the
21 time of his deposition, the witness had first been handed a
22 copy of a letter.

23 THE COURT: Mr. Gomez, this objection is not
24 appropriate. You can make that argument later, but to do it in
25 front of the witness, you understand.

DBP8CHE2

H. Piaguaje - cross

1 MR. GOMEZ: Understood.

2 THE WITNESS: May I say something?

3 THE COURT: If there is a question.

4 Q. The question was, is the testimony you gave on Saturday
5 accurate?

6 A. Yes. Because I remember at that moment you had given me
7 the document that Donziger had sent.

8 THE COURT: The next time you have an idea like that,
9 Mr. Gomez, the thing to do is to ask for a side bar.

10 We will take our break here.

11 (Recess)

12 THE COURT: Ms. Neuman.

13 MS. NEUMAN: Before the break, I neglected to move in
14 Plaintiff's Exhibit 7033A. So I would like to move that in.

15 MR. GOMEZ: No objection.

16 MR. FRIEDMAN: No objection.

17 THE COURT: Received.

18 (Plaintiff's Exhibit 7033A received in evidence)

19 MS. NEUMAN: I would also like to move in Plaintiff's
20 Exhibit 7000.

21 THE COURT: Received.

22 (Plaintiff's Exhibit 7000 received in evidence)

23 Q. Mr. Piaguaje, do you still have Exhibit 1406A in front of
24 you?

25 A. Yes.

DBP8CHE2

H. Piaguaje - cross

1 Q. Is that the August 9, 2010 letter you received from Mr.
2 Kohn?

3 A. I did not receive the document personally.

4 Q. This is the document that I provided to you in your
5 deposition on Saturday, correct?

6 A. Yes.

7 Q. And this is the document you had in front of you on
8 Saturday when you testified you recalled receiving a letter
9 from Joe Kohn on or about August 9th of 2010, correct?

10 A. I don't recall having said that.

11 MS. NEUMAN: We have already offered that testimony,
12 your Honor.

13 Move PX 1406A in evidence.

14 MR. FRIEDMAN: I think it's already in, but no
15 objection.

16 THE COURT: I am not sure if it is or isn't, but if it
17 is not, it's received.

18 (Plaintiff's Exhibit 1406A received in evidence)

19 Q. Mr. Piaguaje, do you recall Mr. Kohn ever telling you that
20 Mr. Fajardo, Mr. Yanza, and Mr. Donziger had told him blatant
21 lies?

22 A. I don't recall.

23 Q. Do you recall Mr. Kohn recommending to you that an
24 investigation be done into how the litigation in Ecuador was
25 being handled?

DBP8CHE2

H. Piaguaje - cross

1 A. I don't recall.

2 Q. Did you attend a meeting with Judge Yanez and Mr. Fajardo
3 and Mr. Yanza while Judge Yanez was handling the Lago Agrio
4 litigation?

5 A. With Mr. Yanez, yes.

6 Q. And you approved of Pablo Fajardo and Luis Yanza's meetings
7 with Richard Cabrera prior to Mr. Cabrera's appointment as an
8 independent expert for the court, correct?

9 A. Yes. There was a time when the court was asking the
10 parties or telling the parties that they had to submit experts.
11 So I recall that perhaps he had previously worked as a
12 technician.

13 Q. And you recall approving Mr. Yanza and Mr. Fajardo meeting
14 with Mr. Cabrera before his appointment as the court's
15 independent expert?

16 A. No.

17 MS. NEUMAN: For impeachment, your Honor, I would
18 offer page 215, starting at line 5 through 9.

19 "Q. And you approve of Pablo Fajardo and Luis Yanza's meetings
20 with Richard Cabrera prior to Mr. Cabrera's appointment as an
21 independent expert?

22 "A. Yes."

23 Q. Was that testimony accurate when you gave it, Mr. Piaguaje?

24 A. I don't recall, but that's how it appears there.

25 Q. You don't recall this testimony you gave yesterday?

DBP8CHE2

H. Piaguaje - cross

1 A. I do recall the testimony I gave yesterday and the day
2 before yesterday.

3 Q. Did Mr. Fajardo tell you you had to come to New York to
4 testify?

5 A. Could you please repeat that?

6 Q. Did Mr. Fajardo tell you that you had to come here to New
7 York to testify?

8 A. Yes.

9 Q. Mr. Fajardo is your attorney?

10 A. Yes.

11 Q. And Mr. Fajardo has personally represented other members of
12 the executive committee and the asamblea, correct?

13 A. Yes.

14 Q. And Mr. Fajardo personally represented Emergildo Criollo on
15 a drug trafficking charge, is that correct?

16 MR. GOMEZ: Objection. Relevance.

17 THE COURT: What is the relevance?

18 MS. NEUMAN: It goes to the extent of the relationship
19 between Mr. Fajardo and the members of the executive committee
20 of the asamblea, on both their personal and professional
21 relationships.

22 THE COURT: And that's relevant why?

23 MS. NEUMAN: To the extent the defendants are offering
24 this organization as having made any sort of relevant
25 decisions, which we don't agree with, obviously, their

DBP8CHE2

H. Piaguaje - cross

1 relationship with Fajardo and their failure to investigate him
2 to have an explanation other than they actually believe he
3 hasn't done anything wrong.

4 THE COURT: Is there a suggestion of conspiracy or
5 not?

6 MS. NEUMAN: Well, yes, your Honor. I think the use
7 of the asamblea as a front organization is certainly in
8 furtherance of the conspiracy. And it goes to the bias of the
9 asamblea when Mr. Fajardo also serves as their personal
10 attorney.

11 MR. GOMEZ: There has been no allegation in the
12 complaint that I am aware of against the asamblea itself. I am
13 not aware that it's an unnamed co-conspirator either.
14 Plaintiffs had an opportunity to amend its complaint. It never
15 brought any such claims against the asamblea.

16 Additionally, to the extent that they want to
17 establish the relationships, the witness has already testified
18 what the relationships are, and there is no need to go into
19 private legal matters that are completely irrelevant to the
20 issues in this case.

21 THE COURT: He testified to those relationships which
22 he thought were appropriate. Your having done that, it seems
23 to me they are entitled to go into what the full scope of the
24 relationships are. It certainly does go to bias at least.

25 So the objection is overruled.

DBP8CHE2

H. Piaguaje - cross

1 MS. NEUMAN: Can the court reporter read the question
2 back to the witness, please.

3 (Record read)

4 A. What I have heard is Emergildo, who is a Cofan leader, had
5 that problem. He was accused of being a drug trafficker, but
6 that was never true. So, therefore, law firms, our attorneys
7 had to recommend to represent Emergildo. I cannot tell you if
8 it was Pablo Fajardo or somebody else. So from what I
9 understand, this case has resolved, from what I understand from
10 an attorney, who in setting somebody else free accused an
11 innocent person of being a drug trafficker.

12 MS. NEUMAN: Move to strike everything other than, I
13 can't tell you if it was Pablo Fajardo or someone else, it was
14 one of our attorneys.

15 THE COURT: Granted.

16 Q. Do you recall, Mr. Piaguaje, whether the prosecutor in
17 Mr. Criollo's case was Nicolas Zambrano?

18 A. No.

19 Q. The salary that Mr. Fajardo makes, that is not set by the
20 asamblea, correct?

21 A. No.

22 Q. You were unaware of Mr. Donziger paying Mr. Fajardo a
23 \$10,000 bonus, correct?

24 A. No.

25 Q. You were not aware of the bonus being paid?

DBP8CHE2

H. Piaguaje - cross

1 A. I don't know.

2 Q. You were also not aware of Mr. Donziger paying a \$10,000
3 bonus to Mr. Yanza from case funds?

4 MR. GOMEZ: Objection.

5 THE COURT: What is the objection?

6 MR. GOMEZ: Can we have a side bar?

7 THE COURT: Yes.

8 (Continued on next page)

DBP8CHE2

H. Piaguaje - cross

1 (At the side bar)

2 MR. GOMEZ: Your Honor, the question is misleading, in
3 the sense that it assumes a fact has occurred, and so purports
4 to compel the witness to answer on the basis of that assumption
5 of the fact. If the question is asked differently, perhaps we
6 wouldn't have an objection to it. He has already testified at
7 least to one instance on the same form of that question, that
8 he is not aware of it. There is an assumption there that that
9 payment was actually made.

10 THE COURT: Ms. Neuman.

11 MS. NEUMAN: That's based on Mr. Donziger's testimony.
12 He confirmed a bonus was paid to Mr. Yanza and Mr. Fajardo,
13 \$10,000 in 2010, and Mr. Yanza received another 12,000 in
14 September of '07 in the 1782 proceeding.

15 THE COURT: Well, look, it seems to me you can ask the
16 question a different way and resolve Mr. Gomez's issue without
17 the need for a ruling.

18 (Continued on next page)

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DBP8CHE2

H. Piaguaje - cross

1 (In open court)

2 BY MS. NEUMAN:

3 Q. Mr. Piaguaje, do you know whether Mr. Donziger paid a
4 \$10,000 bonus to Mr. Yanza from case funds in October of 2010?

5 A. I don't know.

6 Q. Do you know whether Mr. Donziger paid Mr. Yanza \$12,000
7 from case funds in September of 2007?

8 A. No.

9 Q. Are you aware of Mr. Yanza purchasing a new house during
10 the course of the litigation?

11 A. No.

12 Q. You're aware that Mr. Fajardo was named as a defendant in
13 this case, correct?

14 A. Yes.

15 Q. And you were not aware prior to your deposition this
16 weekend that Mr. Fajardo had refused to testify, is that right?

17 A. I don't know.

18 Q. You're aware that Mr. Yanza is a defendant in this case, a
19 defaulted defendant?

20 A. Yes.

21 Q. You were unaware prior to your testimony that Mr. Yanza had
22 refused to testify?

23 A. I did not know.

24 Q. Have you read the complaint in this case, sir?

25 A. Read it, no.

DBP8CHE2

H. Piaguaje - cross

1 Q. Have you ever read any of the documents that have been
2 submitted in the case, the evidence?

3 MR. GOMEZ: Objection. Compound.

4 THE COURT: Sustained.

5 Q. Have you read any of the rulings that have been issued in
6 this case?

7 A. Could you please repeat that?

8 Q. Have you read any of the rulings by the Court in this case?

9 A. Previously, yes.

10 Q. When did you read a ruling by this Court?

11 A. I don't recall the year, but I recall the ruling regarding
12 not enforcing the judgment in other countries, something like
13 that.

14 Q. You have watched the outtakes from the movie Crude that are
15 on the Chevron Web page?

16 A. Yes.

17 Q. Have the asamblea done any investigation into the
18 allegations that Mr. Fajardo has committed fraud during the
19 course of the Ecuador litigation?

20 A. We do not investigate any of our attorneys nor technicians,
21 but, rather, that is for the defendants, for Chevron in Ecuador
22 to file the complaints in court in Ecuador. So perhaps it is
23 an obligation or perhaps there should be sanctions by the
24 courts in case there has been this corruption you could say.

25 Q. But the asamblea has not undertaken to investigate whether

DBP8CHE2

H. Piaguaje - cross

1 any of its attorneys, including Mr. Donziger and Mr. Fajardo,
2 committed fraud?

3 A. No.

4 Q. Mr. Donziger is still a lawyer for the plaintiffs, correct?

5 A. Yes.

6 Q. Mr. Piaguaje, did you and Mr. Fajardo bring a criminal
7 complaint against former Judge Guerra in February of 2013?

8 A. Yes.

9 Q. Mr. Fajardo drafted that complaint?

10 A. Yes.

11 Q. And you signed it, sir?

12 A. Yes.

13 Q. You did not do any investigation of your own into the
14 validity of Mr. Guerra's statement prior to filing that
15 criminal complaint, is that true?

16 A. No.

17 THE COURT: Meaning no, it's not true, you did do an
18 investigation, or meaning no, you didn't do an investigation?

19 THE WITNESS: We did not do an investigation of this.
20 It's up to the legal team.

21 MS. NEUMAN: May I approach, your Honor?

22 THE COURT: Yes.

23 Q. Mr. Piaguaje, can you turn to the last page of Exhibit
24 1758, please?

25 A. Yes.

DBP8CHE2

H. Piaguaje - cross

1 Q. Is that your signature that appears above the phrase
2 "Technologist, Humberto Piaguaje Lucitante, the plaintiff"?

3 A. Yes.

4 Q. Did you read this document before you signed it?

5 A. I did not read it, but because of what he was stating, we
6 knew what Alberto Guerra was saying.

7 Q. You didn't read this criminal complaint before you signed
8 it?

9 A. No.

10 Q. Were you aware prior to signing this criminal complaint
11 that Judge Guerra had deposit slips showing deposits into his
12 bank account from an employee of Selva Viva?

13 A. No.

14 Q. Were you aware prior to signing this criminal complaint
15 that Judge Guerra had shipping records showing shipments
16 between himself and former Judge Zambrano?

17 MR. GOMEZ: Objection, your Honor.

18 THE COURT: What is the objection?

19 MR. GOMEZ: Side bar, please.

20 (Continued on next page)

DBP8CHE2

H. Piaguaje - cross

1 (At the side bar)

2 MR. GOMEZ: Your Honor, this is similar to the
3 previous side bar. The question is misleading. It assumes
4 that facts are established. These are disputed facts, and I
5 think the question should be asked in a different manner.

6 THE COURT: There is a whole stack of these shipping
7 records, isn't there?

8 MR. GOMEZ: There is existence of shipping records,
9 yes. The suggestion of the shipping records, their mere
10 existence, or their authenticity is in dispute by the parties.

11 THE COURT: I don't think authenticity is disputed at
12 all. I know that there may be an outstanding admissibility
13 issue, but that's different.

14 MR. GOMEZ: I think the question was posed to the
15 witness to suggest that the shipping records go to the
16 credibility of the statements in the complaint. I prefer
17 another question to the witness whether he is aware.

18 THE COURT: This one is overruled.

19 (Continued on next page)
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DBP8CHE2

H. Piaguaje - cross

1 (In open court)

2 THE COURT: Objection is overruled.

3 MS. NEUMAN: Can the court reporter read that question
4 back, please?

5 THE COURT: Yes.

6 (Record read)

7 A. No.

8 Q. Prior to filing this complaint, were you aware that former
9 Judge Guerra had on his own computer drafts of judgments
10 subsequently issued by Judge Zambrano?

11 A. I heard that in the news.

12 Q. Did you hear that before you signed this complaint?

13 A. I apologize. I was focusing on something else. Could you
14 please repeat that?

15 Q. Did you hear in the news that Judge Guerra had drafts of
16 orders that were later issued by Judge Zambrano on his computer
17 before you signed the criminal complaint against Judge Guerra?

18 A. Well, first of all, the decisions by the court had already
19 been issued. But after that, Alberto Guerra mentioned many
20 things, like he had drafted the judgment. So that was when we
21 filed a complaint.

22 Q. Was it prior to the filing of the complaint that you heard
23 in the news that Judge Guerra had on his own computer drafts of
24 orders and judgments that were subsequently issued by Judge
25 Zambrano?

DBP8CHE2

H. Piaguaje - cross

1 A. Yes. Because then this would take its course and that
2 would affect all of us in our process. That is why we had to
3 file that complaint against Alberto Guerra, with the purpose of
4 having him clarify that and tell the truth.

5 Q. As part of your criminal complaint against former Judge
6 Guerra, did you ask that a forensic examination of Judge
7 Zambrano's computers be conducted?

8 A. We had written into the complaint that they could do all of
9 the necessary and proper investigations.

10 Q. Including a forensic investigation of the computers,
11 correct?

12 A. Yes.

13 Q. And you're aware that forensic examiners issued a report on
14 Judge Zambrano's computers in response to the criminal
15 complaint you had filed?

16 A. I don't know.

17 Q. Did you ever comment in the press about the forensic report
18 being issued in the criminal case against Judge Guerra?

19 A. No.

20 MS. NEUMAN: I move the admission of PX 1758.

21 THE COURT: For what purpose is it offered?

22 MS. NEUMAN: To show the threatening and intimidation
23 of witnesses as a continuation of the conspiracy, and also to
24 show that the forensic examination of Judge Zambrano was
25 requested pursuant to this complaint and was subsequently

DBP8CHE2

H. Piaguaje - cross

1 carried out. But not for the truth.

2 THE COURT: How does it show that it was subsequently
3 carried out?

4 MS. NEUMAN: Well, it doesn't show the subsequently
5 carried out part.

6 THE COURT: Mr. Gomez.

7 MR. GOMEZ: Your Honor, so the first use proposed,
8 there is no foundation for that.

9 As to the second, we have no objection as evidence of
10 the complaint being filed, and certainly not for the truth.

11 THE COURT: Received not for the truth of the matters.

12 (Plaintiff's Exhibit 1758 received in evidence)

13 MS. NEUMAN: May I approach, your Honor?

14 THE COURT: Yes.

15 BY MS. NEUMAN:

16 Q. Mr. Piaguaje, Plaintiff's Exhibit 7086 is an October 22,
17 2013 "El Telegrafo" article entitled, "Expert Examination
18 Confirms Judgment Authorship and Lawsuit Against Chevron."

19 Have you seen this article before, sir, the Spanish
20 version?

21 A. No.

22 Q. At the bottom of the first page of the article, the author
23 states, "For Humberto Piaguaje, coordinator of those affected
24 by the oil company, through former Judge Zambrano's testimony
25 and the expert report both, it is revealed and confirmed that

DBP8CHE2

H. Piaguaje - cross

1 the witnesses Chevron is presenting against the Ecuadorians
2 have been paid by the oil company to lie and to provide Judge
3 Lewis Kaplan with the arguments to condemn the residents who
4 have been victims of the irresponsible and criminal actions of
5 the oil company as extortionists." Do you see that?

6 A. Yes.

7 Q. Did you make that statement to the press, sir?

8 A. They called me many times, not only that newspaper, many
9 times they called me. They called me on my cell phone, they
10 called me on my landline, to ask what position those affected
11 were taking. And as victims, we, in the operations of Chevron
12 and previously Texaco, and victims of our efforts to seek
13 justice having not been acknowledged, we then had to consider
14 in that sense the complaint against Mr. Alberto Guerra.

15 MS. NEUMAN: Move to strike as not responsive, your
16 Honor.

17 THE COURT: Granted. Stricken.

18 The question, Mr. Piaguaje, is did you make the
19 statement to the press that is reported in the last paragraph
20 of this exhibit?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 Q. Are you aware, Mr. Piaguaje, that as a complainant on the
24 criminal complaint, you have a right to review the copy of the
25 expert forensic report?

DBP8CHE2

H. Piaguaje - cross

1 A. I don't know the procedure of how that is done, but I would
2 imagine that that is so.

3 Q. Has anyone asked you to go and get a copy of the forensic
4 expert report in the Guerra criminal investigation?

5 A. No.

6 MS. NEUMAN: Nothing further, your Honor.

7 THE COURT: Do you intend to offer 7086, Ms. Neuman?

8 MS. NEUMAN: Yes. I move that in, but not for the
9 truth.

10 THE COURT: Any objection?

11 MR. GOMEZ: No objection.

12 MR. FRIEDMAN: No objection.

13 THE COURT: Received not for the truth.

14 (Plaintiff's Exhibit 7086 received in evidence)

15 THE COURT: Mr. Gomez, you may proceed.

16 REDIRECT EXAMINATION

17 BY MR. GOMEZ:

18 Q. Mr. Piaguaje, in response to questions by Ms. Neuman, you
19 testified at one point that Mr. Donziger's functions had been
20 terminated. And then in response to other questions, you
21 testified that he is still a lawyer for the Lago Agrio
22 plaintiffs. What did you mean by those two statements, sir?

23 MS. NEUMAN: Objection. I think it misstates his
24 testimony.

25 THE COURT: No. I think it's pretty accurate.

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H. Piaguaje - redirect

1 A. Yes. Actually, when Steven Donziger was in charge of
2 communications and seeking financing, in that date, in January
3 of 2011, at that time, once it was understood what problem he
4 was having in the United States, he was suspended from his
5 functions.

6 (Continued on next page)

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H. Piaguaje - redirect

1 Q. What problems are you referring to?

2 A. Problems that have not been considered nor approved by the
3 assembly, administrative issues. He was not giving an
4 accounting, not even to the assembly. And other problems that
5 we saw that even though he was not an attorney, he was, he was
6 being a target of many attacks by Chevron. And us as the
7 Afectados could see this was an issue involving Steven but it
8 was rather an issue involving us, the Afectados, and the
9 settlers in Ecuador. And that's why we had to relieve him of
10 his duties, but that doesn't mean we removed him as an
11 attorney. We let Steven focus, deal with his case in the
12 United States, the RICO case.

13 Q. When was that decision made?

14 A. In November of 2013 -- excuse me, excuse me. In January of
15 2013.

16 Q. Mr. Piaguaje, in response to other questions by Ms. Neuman,
17 you testified with reference to a company in Gibraltar.

18 Do you remember that testimony, sir?

19 A. Yes.

20 Q. Does that company in Gibraltar have anything to do with the
21 trust that the judgment requires to be set up to receive the
22 funds, if any, that are paid by Chevron?

23 MS. NEUMAN: Objection, calls for a legal conclusion.

24 THE COURT: Sustained.

25 Q. Mr. Piaguaje, are you aware, do you know -- withdrawn.

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H. Piaguaje - redirect

1 Mr. Piaguaje, do you know whether the judgment in the
2 Lago Agrio case requires the establishment of a trust?

3 MS. NEUMAN: Same objection.

4 THE COURT: Sustained. Speaks for itself.

5 Q. Mr. Piaguaje, has the assembly taken any action to
6 establish a trust in meetings where you personally
7 participated?

8 A. Yes. We have first of all come up with a profile as to who
9 should set up that trust. So they've been chosen in the
10 assemblies by each of the associations of the indigenous
11 nations and the settlers.

12 Q. What is the purpose of that trust?

13 A. The trust is set up exclusively to handle and execute and
14 enforce judgment and to take the judgment and the funds and to
15 use those funds for cultural issues, remediation, health, and
16 other issues that are established in the judgment.

17 Q. Are the moneys paid by Chevron from an enforcement action
18 supposed to go into that trust, as you understand it?

19 MS. NEUMAN: Objection, lacks foundation.

20 THE COURT: Sustained.

21 Q. Do you know where that trust is supposed to receive funds
22 from to fulfill that purpose?

23 MS. NEUMAN: Same objection.

24 THE COURT: Sustained.

25 Look, there must be a mountain of documents containing

DBPLCHE3

H. Piaguaje - redirect

1 the answers, if there are answers to these questions. Right,
2 Mr. Gomez?

3 MR. GOMEZ: There are in the minutes of the asamblea
4 meetings, your Honor, that I'm aware of.

5 MS. NEUMAN: I don't think the trust documents, if
6 there are any, have been produced.

7 MR. GOMEZ: I'm sorry?

8 MS. NEUMAN: I don't think the trust documents, if
9 there are any, have been produced, unless I'm mistaken.

10 MR. GOMEZ: I am not aware if they have or not at this
11 time.

12 THE COURT: Well, I'd rather imagine they haven't. I
13 don't see any basis of personal knowledge. I think there's a
14 best evidence problem. Maybe there's some way you can get at
15 this, but you haven't so far.

16 Was it raised on the cross?

17 MS. NEUMAN: No, your Honor. Beyond the scope. I
18 only questioned the witness about the Gibraltar company that he
19 testified today and testified previously was to receive the
20 proceeds of the judgment.

21 Q. Mr. Piaguaje, is the Gibraltar company supposed to receive
22 funds from the enforcement of the judgment or from a settlement
23 of the judgment?

24 MS. NEUMAN: Objection, calls for a legal conclusion.

25 THE COURT: Sustained.

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H. Piaguaje - redirect

1 Q. Mr. Piaguaje, what was your basis in response to
2 Ms. Neuman's questions for saying that the Gibraltar company is
3 supposed to receive funds or money collected from the judgment?

4 A. Well, Gibraltar, we know something that we consider in the
5 assembly. As an entity, we know that Gibraltar is in southern
6 Spain and we know that they have experience and they have
7 handled these sums of money in that area. So, therefore, so we
8 consider that at any moment when this is concluded, whether via
9 the courts or in an out-of-court settlement, it could be
10 received by that company which is made up of our
11 representatives and also by made up by some of the investors.

12 And why is it so? Because we want, before it goes
13 into a trust, we want to settle the debts that can remain from
14 the trial, meaning if it's an out-of-court settlement, there
15 could be a guarantee to make those payments through that
16 company.

17 Q. Does the assembly exercise control over the Gibraltar
18 company?

19 MS. NEUMAN: Objection, calls for a legal conclusion.

20 THE COURT: Yes. Sustained. At least in that form.

21 Q. Who does the Gibraltar company answer to?

22 MS. NEUMAN: Objection, calls for a legal conclusion,
23 lacks foundation.

24 THE COURT: Sustained.

25 Q. What control if any does the asamblea have over the

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H. Piaguaje - redirect

1 Gibraltar company?

2 MR. MASTRO: Same objection.

3 THE COURT: I'll let him testify to his understanding,
4 whatever it may be. Overruled to that extent.

5 A. We have control because it is made up by our people who
6 represent the indigenous nations and they are authorized.

7 Q. Authorized by whom?

8 A. By the assembly of the Afectados, in this case, the union
9 of those affected.

10 Q. Mr. Piaguaje, did there ever come a time when there was a
11 conflict between Joseph Kohn and the interests of the asamblea
12 in 2010?

13 MS. NEUMAN: Objection, leading.

14 THE COURT: Overruled.

15 A. Yes.

16 Q. What was the nature of that conflict, sir?

17 A. The nature of the conflict was that Mr. Kohn had his own
18 interests, interests of reaching an out-of-court settlement
19 with Chevron. Whereas the assembly, we said that out-of-court
20 settlement that he is going to reach will not remediate the
21 environmental damages that we have suffered. That's why there
22 was a very different interest that we had with Joseph Kohn and
23 the affected.

24 Q. What did you understand Mr. Kohn was trying to achieve by
25 proposing a settlement?

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H. Piaguaje - redirect

1 MS. NEUMAN: Objection.

2 THE COURT: Sustained.

3 Q. Was Mr. Kohn trying to settle the case to recoup his
4 expenses in the lawsuit?

5 MS. NEUMAN: Objection.

6 THE COURT: Sustained. You're asking him to speculate
7 or give his opinion on what someone else's motives were and
8 that's not appropriate.

9 Q. What did you believe Mr. Kohn was trying to achieve in
10 proposing a settlement in 2010?

11 MS. NEUMAN: Objection, lacks foundation, relevance.

12 THE COURT: Sustained. Not for lack of foundation.

13 Q. Mr. Piaguaje, who made the final decision to terminate
14 Mr. Kohn as an attorney for the Lago Agrio plaintiffs?

15 A. The final decision was made by the assembly of the union of
16 the affected.

17 MR. GOMEZ: I have nothing further.

18 THE COURT: Thank you.

19 Mr. Friedman?

20 MR. FRIEDMAN: Nothing, your Honor. Thank you.

21 THE COURT: Ms. Neuman.

22 MS. NEUMAN: Just a couple questions, your Honor.

23 RECROSS EXAMINATION

24 BY MS. NEUMAN:

25 Q. Mr. Piaguaje, is the name of the corporation in Gibraltar

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H. Piaguaje - recross

1 Amazonia Recovery Limited?

2 A. Yes.

3 Q. Mr. Donziger, he's still within your team of attorneys to
4 this day, correct?

5 A. Yes.

6 Q. Mr. Donziger is still entitled to benefit from the
7 collection of the judgment, correct?

8 A. Yes.

9 Q. And you gave an interview supporting Mr. Donziger on the
10 first day of this trial; do you recall that?

11 A. Yes.

12 MS. NEUMAN: Nothing further, your Honor.

13 THE COURT: Thank you.

14 Mr. Gomez?

15 MR. GOMEZ: Nothing further.

16 THE COURT: Mr. Friedman?

17 MR. FRIEDMAN: Nothing further.

18 THE COURT: Thank you, Mr. Piaguaje. You're excused.

19 THE WITNESS: Thank you.

20 (Witness excused)

21 THE COURT: Mr. Gomez.

22 MR. GOMEZ: Your Honor, my clients rest.

23 THE COURT: Okay. Mr. Friedman, I think you have
24 previously, right?

25 MR. FRIEDMAN: Your Honor, the only thing that

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1 remained is to move our trial exhibits with the statements and
2 deposition designations into evidence. We brought the hard
3 drives today to move into evidence, and Chevron had some
4 questions that we said we'd address over the noon hour.

5 So with that exception, we don't have any other
6 witnesses. We just need to get that housekeeping done.

7 THE COURT: All right. So you're resting subject to
8 the exhibit issue which you're going to resolve today.

9 MR. FRIEDMAN: Yes.

10 MR. MASTRO: Yes, your Honor, and obviously subject to
11 our objections, which is the way the Court has received --

12 THE COURT: Most things.

13 MR. MASTRO: -- deposition exhibits thus far, and we
14 have objections to a lot of them. Thank you.

15 THE COURT: All right. Now, I have a note here to ask
16 if you can supply something else. Plaintiff's Exhibit 1 is the
17 Berlinger outtake log.

18 MR. MASTRO: Yes, your Honor.

19 THE COURT: If it is possible with reasonable
20 convenience for the plaintiff to supply that with the addition
21 of a column indicating as to each item what the trial exhibit
22 number, if any, is in the spreadsheet form that can be sorted,
23 that would be helpful. Of course, anything you supply has to
24 be provided to the other side.

25 MR. MASTRO: Absolutely, your Honor, we can do that.

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1 And as you know, all the Crude exhibits now have been submitted
2 and received without objection.

3 THE COURT: Well, you know, I guess I think I know
4 that or I think I guess I know that or something.

5 MR. MASTRO: Yes, your Honor.

6 THE COURT: But I'm happy to hear it. Something
7 without objection in this case may rival an agreement with the
8 ground. That was a joke.

9 MR. MASTRO: Got it.

10 THE COURT: Okay. Mr. Friedman.

11 MR. FRIEDMAN: Your Honor, Chevron had indicated I
12 think it was last week an intent to provide the Court with the
13 English translation of the Ecuadorian Supreme Court opinion,
14 and I'm just questioning where that is procedurally.

15 THE COURT: Well, I certainly don't know where it is,
16 and if anybody wants it before me for anything other than
17 informational purposes, somebody is going to have to offer it
18 and address any objections to it.

19 MR. MASTRO: And, your Honor, we have been trying to
20 get a translation finalized. It should be imminent. We were
21 hoping to have that last night, maybe today.

22 THE COURT: Okay. All right.

23 Now, you have some witnesses, is that right,
24 Mr. Mastro?

25 MR. MASTRO: Yes, your Honor, we do, proceeding to our

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1 rebuttal case?

2 THE COURT: Well, yes, that's what normally happens
3 after the defense case. But something got filed very late, not
4 that I'm faulting anybody because everything about this is very
5 late, but.

6 MR. MASTRO: Your Honor, our first rebuttal witness
7 would be Mr. Dan Blank. He'll be put on by my colleague Reed
8 Brodsky.

9 MR. BRODSKY: Just one moment, your Honor, to set up.

10 MR. FRIEDMAN: Your Honor, I wonder if we could be
11 heard on our objections to the rebuttal case itself. I don't
12 know if you had a chance to read our motion, but essentially
13 what we argued is that they're not rebutting anything that we
14 presented in our case and they're rebutting things we didn't
15 put into evidence that aren't in evidence at all.

16 THE COURT: Well, I did read it and I read Chevron's
17 response early this morning. My initial reaction to it is on
18 several levels.

19 First of all, they propose to call, independent of
20 Mr. Blank, Mr. Lynch to testify that 30 percent of the judgment
21 in Ecuador falls within quotation marks, which they argue is
22 rebuttal to Zambrano. Now, I understand the technical
23 argument. They called Zambrano on their case in chief. I
24 understand also, if you'll remember, perhaps, that the defense
25 asked for permission to go beyond the scope of the direct and

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1 make Zambrano your witness as well on cross in order to avoid
2 bringing him back on the defense case. So my preliminary
3 reaction is not to stand too much on ceremony about that
4 sequence.

5 And as to the 30 percent, it seems to me not a very
6 controversial issue. I could sit down with the 188 pages and
7 count myself. So if there's no -- and you guys could probably
8 stipulate as to whatever that figure is if you don't want to
9 hear a witness. So in one way or another, it seems to me that
10 whatever anybody wants in the record on that point I ought to
11 have.

12 Anybody disagree with that?

13 MR. MASTRO: No, your Honor.

14 MR. FRIEDMAN: I think that's a minor point, your
15 Honor. No, I won't disagree with that.

16 THE COURT: Mr. Gomez?

17 MR. GOMEZ: Same, your Honor.

18 THE COURT: And I bet over lunch you can work out a
19 stipulation as to that.

20 Now, the more substantial problem relates to
21 Mr. Lynch's testimony. And while I don't profess in the couple
22 of hours that I've seen the full dimensions of this to
23 understand every conceivable nuance, it seemed to me
24 preliminarily that there were two fundamental propositions that
25 Chevron, apart from the 30 percent business, is endeavoring to

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1 establish through the rebuttal testimony.

2 First of all, Mr. Zambrano testified that the Lago
3 Agrio judgment was created entirely on what he referred to as
4 his new computer, not his old computer. And I gather that
5 Mr. Lynch would testify that given what's in the Tarco
6 declaration as to which computer the file "providencias.docx"
7 was found on, the judgment, to the extent it exists on a
8 computer down there, is on the other computer, not the computer
9 Zambrano said he used to create it.

10 And my understanding of all of that is that that
11 doesn't depend on the 25 pages of the report that was made to
12 the prosecutor in Ecuador. It depends I think only on
13 paragraphs 5 and 10 of the Tarco declaration that the
14 defendants submitted in support of the motion for permission to
15 call him.

16 MR. FRIEDMAN: I think that's right, your Honor.

17 THE COURT: Okay. The next point is that I think it's
18 the report, not the declaration or at least not the declaration
19 all by itself indicates that the providencias.docx file had a
20 file system creation date of October 11, 2010, which the
21 defense argues is consistent with Zambrano's account of when
22 the judgment was prepared, I think, and Lynch would testify
23 that whatever Mr. Tarco or the report otherwise may have said,
24 the report reveals that the same file has an embedded creation
25 date of January 21, 2011, which is three months later, that

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1 that is a weird anomaly, and that at least in Mr. Lynch's view,
2 a possible or the most possible -- I'm not sure which --
3 explanation for that is that somebody monkeyed with the
4 computer and that the file system creation date is not the real
5 live McCoy.

6 I think those are the key points. Does anybody have a
7 view as to what other key points or different key points or any
8 corrections?

9 MR. BRODSKY: I think there are some additional
10 points. Ms. Neuman can address them. There are some addition
11 points.

12 MS. NEUMAN: Yes, your Honor. Mr. Lynch would also in
13 addition to opining that the judgment was -- that Mr. Tarco
14 discusses a document found on the old computer with anomalous
15 metadata, he would also reveal that the judgment was put on the
16 new computer for the first time in 2012, according to the Tarco
17 report filed in Ecuador, that the edit time that Mr. Tarco says
18 the document has of 3,571 hours is physically impossible given
19 Mr. Zambrano's testimony and given a calendar and that --

20 THE COURT: You don't need an expert for that, do you?

21 MS. NEUMAN: Well, not --

22 THE COURT: We can all count the number of hours.

23 MS. NEUMAN: Yes. But Mr. Lynch, and perhaps we can
24 stipulate to this, would testify that edit time only
25 accumulates from the embedded create date and not the file

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1 system create date which cuts the time down by a significant
2 margin. And he would also testify as to the misleading way
3 that information was presented in the Tarco declaration that
4 was filed with the court.

5 THE COURT: Okay. I appreciate the elucidation.

6 What is Chevron's contention and support for the
7 proposition that I should consider any rebuttal evidence from
8 Lynch that rests on 25 selected pages of a 400-page report?

9 MR. BRODSKY: Your Honor, I can address that. The
10 objection seems to first be to the authenticity of what
11 Mr. Blank viewed in Ecuador and took scanned images and
12 photographic images of, which is the Tarco report.

13 400 pages is a little misleading. Mr. Blank will
14 testify that although not with exact precision, the report
15 itself contains eight sections or was approximately 40 pages
16 and then contained attachments including the providencias.docx
17 and the judgment, which your Honor knows are hundreds of pages
18 long.

19 And so we have 25 pages of a 40-page, approximately
20 40-page report which don't contain the beginning sections which
21 contain definitions, but include in that metadata, which is not
22 hearsay. But as to the authenticity, it's Mr. Blank himself
23 who asked for and was given.

24 THE COURT: I'm not addressing authenticity right now.
25 I'm addressing what either is or is analogous to the rule of

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1 completeness, or I guess in this context, to the question of
2 whether an expert ought to be heard to offer an opinion based
3 on what the expert knows in advance is only part of the
4 underlying document, which is a premise of at least some part
5 of what he has to say.

6 MR. BRODSKY: Your Honor, I think that goes to the
7 weight, not to its admissibility. The scanned images and the
8 photographs that Mr. Blank took from Mr. Tarco's report in
9 Ecuador pass the authenticity rules. They are certainly
10 relevant, and they're admissible under the hearsay rules.

11 And so one of the things the defense may cross-examine
12 Mr. Lynch about is the extent to which he can reach those
13 opinions based on only having certain metadata or certain
14 information from this report in Ecuador and that's a fair point
15 for them to make. I don't think it's effective given that what
16 Mr. Lynch will be testifying about is metadata that -- images
17 of this metadata coming from these computers.

18 THE COURT: All right. Mr. Friedman, you want to
19 address that, and then we're going to get to the issue of the
20 declaration separately.

21 MR. FRIEDMAN: All right. Yes. Your Honor, we have I
22 guess eight sections, 40 pages long. The beginning, including
23 the definitions, are missing. The conclusion is missing. The
24 expert is saying that the report he's trying to offer is
25 misleading, mistaken, and/or unsubstantiated. I don't know

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1 even what to say beyond that.

2 THE COURT: Well, he's got other things to say about
3 it.

4 MR. FRIEDMAN: Well, with regard to the report. To
5 the extent he's relying upon an incomplete report, which he
6 acknowledges is unreliable, I think there's a real problem
7 under Daubert and the evidence rules to let that in. I have
8 another --

9 THE COURT: Let me just, he proposes to say a bunch of
10 things.

11 MR. FRIEDMAN: Yes.

12 THE COURT: But I'm trying to focus on particular
13 things because you may be totally right as to some of the
14 things. You may be totally right as to all of them. I haven't
15 made up my mind. But as to some of them, you may be more
16 clearly right than others.

17 MR. FRIEDMAN: All right.

18 THE COURT: So the second point on my list was that he
19 proposes to say, and I think it's in paragraph 22B of this
20 supplemental report or whatever it is -- I'm mistaken. It's
21 not 22B. But somewhere in here is the business about the
22 embedded creation date.

23 Now, for that, what does he rely on?

24 MR. FRIEDMAN: He's relying upon the report, your
25 Honor, the 25 pages that's been offered.

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1 THE COURT: Mr. Brodsky, do you know what paragraph he
2 talks about that in?

3 MR. BRODSKY: Your Honor, I apologize. What paragraph
4 are we on, 22B?

5 THE COURT: I'm asking you what paragraph Lynch talks
6 about the embedded creation date in.

7 MR. BRODSKY: That's on paragraph 22C where he talks
8 about the old computer embedded creation date is months after
9 the file creation date.

10 While your Honor reviews that, this report, your
11 Honor, in our view is a whitewash. Okay, your Honor.

12 THE COURT: Stop right there. I can't both listen to
13 you and review it.

14 MR. BRODSKY: Understood.

15 THE COURT: Back to you, Mr. Friedman. Suppose in the
16 25 pages it simply says we examined the computer and the
17 embedded creation date is X. Now, what's the argument that
18 even given the incompleteness of the 25 pages we have that that
19 couldn't be an appropriate basis to express his opinion?

20 MR. FRIEDMAN: Well.

21 MR. BOOTH: May I respond, your Honor? I'm going to
22 do the witness.

23 MR. FRIEDMAN: I'm sorry for this.

24 THE COURT: The last day I'll make this exception to
25 the one lawyer.

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1 MR. FRIEDMAN: Mr. Booth is the one who sort of
2 learned this material.

3 MR. BOOTH: I didn't really want to do it, Judge.

4 THE COURT: You know, I didn't want to be reading this
5 stuff at five in the morning either.

6 MR. BOOTH: I understand. I take your point if it was
7 just a piece of data standing alone could he opine on that
8 data. This, in answer to that question, it's just a screen
9 shot to me and without the full report, it would be impossible
10 for me, a nonexpert, to tell whether the report itself deals
11 with that data and has an explanation.

12 THE COURT: But your side has had the ability to get
13 that report for a long time.

14 MR. BOOTH: Well, I don't believe that's true. I've
15 never seen it. No one has ever offered it to me.

16 THE COURT: That's a whole other story. Maybe certain
17 people don't want you to have it. But Mr. Piaguaje just
18 testified that it was his understanding as the complainant he
19 had the right to get it. And certainly Mr. Fajardo, who signed
20 it, presumably had the right to get it and to have access to
21 it. And you could have checked this out a long time ago.

22 MR. GOMEZ: Your Honor, if I may, with all due
23 respect, I think the distinction is a right to review it but
24 not a right to secure a copy of their report and take it out of
25 the fiscalia.

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1 THE COURT: Do you agree that they had a right to
2 review it?

3 MR. GOMEZ: To review it. Mr. Piaguaje and
4 Mr. Fajardo had a right to review it.

5 THE COURT: That's been true for a long time.

6 MR. GOMEZ: That's correct, your Honor.

7 MR. FRIEDMAN: Can I say, your Honor, as to going
8 right to your point, the report uses the term embedded data,
9 apparently, and then says this is the start date. I'm not
10 trying to split hairs here, but between the language issues and
11 the computer technical issues, the very fact that the
12 definition section is not and no reason has been given for why
13 that wasn't copied. If they're copying the 25 select pages,
14 why not the definition pages that would define --

15 THE COURT: I imagine that Mr. Blank, do I understand
16 he's the guy who did the copying?

17 MR. BRODSKY: Yes, your Honor, he is.

18 THE COURT: So I imagine you're going to find out as
19 to that and it may put this in one light or another.

20 MR. FRIEDMAN: Yes. But it seems like whatever he
21 says, whatever, I mean if he got interrupted, whatever the
22 reason is, we're still left without the definitions of embedded
23 data, start date. I don't know if they're there or not. I'm
24 arguing in the blind here, but that's kind of the point.

25 THE COURT: Maybe he remembers what it said.

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1 MR. FRIEDMAN: He might, and maybe he remembers the
2 conclusion. But, again, we're back to best evidence, the rule
3 of completion.

4 THE COURT: Well, best evidence has an exception for
5 this, doesn't it? I have a feeling you may have brought that
6 to my attention.

7 MR. FRIEDMAN: Rule 101 -- definitely you can use a
8 duplicate, but I was going to actually point the Court to
9 1001(e) that contemplates if a duplicate is going to be used,
10 it has to accurately reproduce the original.

11 THE COURT: Oh, yeah, but the relevant rule is 104,
12 1004, as I remember, 104(b) would be the relevant one, wouldn't
13 it, an original cannot be obtained by any judicial process.

14 MR. FRIEDMAN: Right. That's still not contemplating
15 a partial document. That would get a copy in, a duplicate in,
16 something that, you know -- to bring in -- there's sort of a
17 two-fold problem here in that we've got an incomplete document
18 that the expert himself is saying is unreliable.

19 THE COURT: Yeah, he's saying the document's
20 conclusions are unreliable. That's what he's saying.

21 MR. FRIEDMAN: Well, it's hard to tell.

22 THE COURT: He's not saying that the letters, symbols,
23 and words on the page are unreliable as evidence of what those
24 words are.

25 MR. FRIEDMAN: No. What he is saying is it's an

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1 untrustworthy document and that's kind of the point is we've
2 got 25 out of 40 pages. We don't know whether those other
3 pages explain, add substance to what they're offering.

4 THE COURT: That point I certainly understand. I
5 understand that point.

6 MR. FRIEDMAN: All right. That's my point.

7 THE COURT: Let's go to the other matter.

8 MR. BRODSKY: Your Honor, just to that point, if we
9 can respond, I think the Court has raised the key response to
10 that, first, that they have the right of access through
11 Mr. Fajardo and through Humberto Piaguaje to review the entire
12 report. And if they have any questions about that, they
13 certainly can review it and they can certainly provide the
14 Court with responses to that.

15 Second, your Honor, so their complaint that they don't
16 have access to the complete report is really on them. They
17 have access. They just have not obtained the access.

18 THE COURT: Well, look, the fact of the matter is they
19 were all ready to call this witness if -- and I'm not
20 questioning the veracity of anybody in the courtroom. They
21 were all ready to call him in circumstances where they knew
22 there was a 400-page report. They knew they had access to it.
23 And litigation counsel, at least, knew nothing about what was
24 in it beyond whatever Mr. Tarco told them and they were going
25 to produce Mr. Tarco as a witness in that circumstance.

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1 Now the shoe is on the other foot and they like it a
2 little less and that's not to say who's right or wrong. I mean
3 the worm has turned. It's kind of like who wanted to be in
4 Ecuador in the first place -- 180 degree shift in positions.

5 MR. FRIEDMAN: And the Court said at that time, your
6 Honor, if we wanted to bring him, we had to show best efforts
7 to bring the 400-page -- we didn't know it was 400 pages at the
8 time.

9 THE COURT: Which you didn't.

10 MR. FRIEDMAN: Which we didn't. But the shoe is on
11 the other foot as well in that they should be presenting -- we
12 wouldn't be having this argument if they had the whole 400
13 pages or even presumably the 40 pages.

14 THE COURT: I hear you and I understand the issue as
15 to the report. And as to the report piece of this, I think I
16 want to hear the witnesses that come before the expert because
17 I may be better informed after I hear them. And that testimony
18 doesn't go to the bottom line; it goes to which pieces of paper
19 and how they were obtained and why others weren't obtained and
20 I think I need to know that.

21 Now, the other substantive question is a somewhat
22 different one. Unless I am misunderstanding here, insofar as
23 the proposal is to call Mr. Lynch to testify that the
24 providencias.docx file, which is said to contain something very
25 like the judgment, is on the old computer, not the new

DBPLCHE3

1 computer, it seems to me that if I understand what's been put
2 before me overnight, that rests on a couple of records from
3 Hewlett Packard as to the sequence of the creation of the two
4 devices, some inventory records from the Ecuadorian government
5 as to when these computers were assigned to Judge Zambrano, and
6 one other piece of data or two pieces of data.

7 The two pieces of data are the serial numbers of the
8 two computers and which one is the one that corresponds to what
9 Zambrano called the old and which one corresponds to the new
10 and that, unless I misunderstand it, comes out of paragraphs 5
11 and 13 of the Tarco affidavit without any regard to the report,
12 the 400-page report.

13 Do I misunderstand that?

14 MR. FRIEDMAN: Just a second, your Honor.

15 MS. NEUMAN: That's correct, your Honor.

16 MR. MASTRO: That's correct, your Honor.

17 MR. BOOTH: Yes, I think that's correct, when you take
18 into account the other documents you just mentioned from
19 Ecuador and those other things. The Hewlett Packard documents
20 we stipulated to authenticity without a witness. The Ecuador
21 documents we have not.

22 THE COURT: So the Ecuador documents are yet to be
23 dealt with. And so now the question as to that piece of the
24 Lynch testimony would appear to turn not on this 400-page
25 report in any degree whatsoever. It appears to turn only on

DBPLCHE3

1 those two portions of the Tarco affidavit that you submitted to
2 this Court in support of a motion that I granted.

3 And Chevron has made some arguments and I think, if I
4 understand correctly having read very quickly, I must confess,
5 what I'm essentially getting from that, in addition to some
6 other arguments, is the argument is adoptive admission by the
7 defense.

8 Isn't that right?

9 MR. FRIEDMAN: I wouldn't want to call it that, but we
10 agree that's there and he can testify as to those two things
11 out of the Tarco.

12 THE COURT: He who?

13 MR. FRIEDMAN: Mr. Lynch can rely on those two serial
14 numbers in the Tarco declaration.

15 THE COURT: Okay. So that part of Lynch you have no
16 problem with, subject to the Ecuadorian inventory records; is
17 that right?

18 MR. FRIEDMAN: Well, we still have our objection that
19 we don't believe it's rebutting anything that was presented in
20 our case.

21 THE COURT: Well.

22 MR. FRIEDMAN: But I understand your inclination to
23 rule on that, but I wanted to say that is our position on that.

24 THE COURT: Look, your position is that even though
25 you examined Zambrano at least in part as your own witness and

DBPLCHE3

1 even though you brought him here and so forth, the fact that
2 Chevron called him as an adverse witness on its case means they
3 can't rebut it even in circumstances where the evidence comes
4 to hand very late in the game.

5 MR. FRIEDMAN: Actually our position would be they
6 called, they made the decision to call him in their case in
7 chief, which they had the right to do, before their case was
8 over. They had the Tarco declaration. They had anything they
9 needed to present in their case, anything related to old versus
10 new computer. We then presented evidence for many more days.

11 So that's our position on that. I don't want to
12 belabor it, but it's clearly discretionary. I don't want to.

13 THE COURT: I understand. Let's put that piece to one
14 side. Assuming you lose on that piece, and I'm not saying you
15 do or you don't, but assuming you do, then as to the one piece
16 of the Lynch testimony, subject to the Ecuadorian documents
17 coming in, perhaps, you don't have a problem with his
18 testifying as to which computer was the old and the new, what
19 the sequence of their acquisition by Zambrano was, and I may be
20 not totally fully describing the testimony, but that piece of
21 it.

22 Is that right?

23 MR. FRIEDMAN: That is right.

24 THE COURT: Is that right, Mr. Gomez?

25 MR. GOMEZ: That's correct, your Honor.

DBPLCHE3

1 THE COURT: All right. Well, I think what we're going
2 to do is I'll hear the authentication witnesses and then I'll
3 see where we are. And it may be that what I'll do is take
4 whatever he's got to say or part of what he's got to say
5 subject to your pending motion and think about it some more and
6 rule on it. But I may conceivably come to the view, just so
7 you are all aware, that anything that depends on the 400-page
8 report is not going to come in and this other piece and the
9 30 percent piece may come in. That's just a preliminary
10 feeling. I reserve total right to change my view on it. I
11 want to think about it some more.

12 Okay. Given the hour and given that you're going to
13 try to resolve some things, we'll break now until 2 o'clock.
14 Thank you.

15 (Luncheon recess)

16 (Continued on next page)

DBP8CHE4

Blank - direct

AFTERNOON SESSION

2:30 p.m.

THE COURT: Sorry for the delay. You gave me some things to think about.

Let's start with Mr. Blank and let's see where we go.

MR. BRODSKY: Chevron calls Daniel Blank.

DANIEL BLANK,

called as a witness by the Plaintiff, in rebuttal,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRODSKY:

Q. Mr. Blank, where do you work?

A. I work for Stroz Friedberg.

Q. How long have you worked at Stroz Friedberg?

A. A bit over two years.

Q. Approximately when did you graduate from college?

A. I graduated in 2008.

Q. After graduating from college, where did you work?

A. I worked for KPMG.

Q. What did you do there?

A. I was in the IT advisory practice there.

Q. After working at KPMG, what did you do?

A. I was a senior IT systems analyst at Avon Cosmetics.

Q. For how long?

A. Approximately two years.

DBP8CHE4

Blank - direct

1 Q. After you were at Avon, where did you go?

2 A. I joined Stroz Friedberg.

3 Q. Describe generally what the nature of your job
4 responsibilities are at Stroz Friedberg.

5 A. My job responsibilities at Stroz Friedberg include the
6 acquisition, analysis, preservation, and reporting on of
7 digital forensic evidence.

8 Q. Did there come a time when you were asked to travel to
9 Ecuador?

10 A. Yes.

11 Q. Who asked you to travel to Ecuador?

12 A. Gibson Dunn.

13 Q. When did Gibson Dunn ask you to go there?

14 A. Saturday, November 16.

15 Q. What was your understanding of the purpose of the proposed
16 trip to Ecuador?

17 A. I was to review a forensic report prepared by a Milton
18 Tarco.

19 Q. Did you travel to Ecuador?

20 A. Yes, I did.

21 Q. When did you do that?

22 A. On Sunday, November 17.

23 Q. Directing your attention to the next day, November 18,
24 2013, where were you?

25 A. I was at the prosecutor's office in Lago Agrio, Ecuador.

DBP8CHE4

Blank - direct

1 Q. Were you alone at the prosecutor's office or with others?

2 A. No, I was with others.

3 Q. How many people were you with?

4 A. Three others.

5 Q. Was one of those people Vladimir Andocilla, an attorney for
6 Alberto Guerra?

7 A. Yes, one of those people was Vladimir Andocilla.

8 Q. Were the other two people working for Kroll?

9 A. Yes.

10 Q. Describe in general where the prosecutor's office in Lago
11 Agrio Ecuador was located.

12 A. The prosecutor's office in Lago Agrio was located in the
13 town proper of Lago Agrio, on the fourth floor of a walk-up
14 building containing other offices.

15 Q. Do you speak or write Spanish?

16 A. No, I do not.

17 Q. Did anyone translate for you Spanish while you were in the
18 prosecutor's office in Lago Agrio?

19 A. Yes.

20 Q. How long were you in the prosecutor's office that day?

21 A. Approximately six hours.

22 Q. What happened upon your arrival?

23 A. Upon my arrival, I met with Mr. Andocilla. We walked up to
24 the fourth floor of the prosecutor's office. Upon entering the
25 office, some tables and chairs were rearranged and a series of

DBP8CHE4

Blank - direct

1 bound documents was presented to me on the table.

2 Q. Approximately how many bound volumes of documents?

3 A. Approximately six bound volumes.

4 Q. Describe them in general.

5 A. These bound documents were bound in a thicker blue paper.

6 They bore unique identifiers on the covers of each one. They
7 contained approximately 50 or 75 pages each.

8 Q. What do you mean by unique identifiers on the cover of each
9 bound volume?

10 A. On the covers there were a series of identifiers in
11 Spanish, some of which said Denunciante Pablo Fajardo Mendoza,
12 Denunciado Alberto Guerra Bastidas.

13 Q. Did you write down what was in Spanish on the front covers
14 of these bound volumes?

15 A. Yes, I did.

16 MR. BRODSKY: May I approach, your Honor?

17 THE COURT: Yes, you may.

18 Q. I am showing you, Mr. Blank, a one-page document,
19 Plaintiff's Exhibit 4129 for identification. Do you recognize
20 it?

21 A. Yes, I do.

22 Q. What is it?

23 A. This is the information I wrote down from the cover of the
24 bound documents while at the prosecutor's office.

25 Q. Prior to coming to court today, did you review this

DBP8CHE4

Blank - direct

1 document and determine that what is written here reflected what
2 you saw on each of the bound volumes that was in the
3 prosecutor's office?

4 A. Yes, I did.

5 Q. How do you know this document reflects that?

6 A. I initialed the bottom of this document indicating as such
7 that the information contained here is as I saw it on that
8 volume.

9 MR. BRODSKY: Your Honor, we offer 4129.

10 MR. FRIEDMAN: I object on foundation, your Honor.

11 I could ask a question to clarify or I can wait till
12 later. The issue is, was this the cover for each one, or was
13 this on each of the six, or were there separate ones?

14 THE COURT: Clarify.

15 Q. Mr. Blank, the information that appears in 4129,
16 Denunciante Pablo Fajardo Mendoza, Denunciado Alberto Guerra
17 Bastidas, and the other information there, was that on each
18 cover of the bound volumes that you observed in the
19 prosecutor's office, on one of them, or on several of them?

20 A. No. To the best of my recollection, on every one of those
21 bound volumes the same information appeared.

22 Q. That information is on 4129 for identification, correct?

23 A. Yes. That information is on 4129.

24 MR. BRODSKY: We offer it.

25 MR. FRIEDMAN: I have all the same objections we

DBP8CHE4

Blank - direct

1 discussed earlier.

2 THE COURT: And which ones were those?

3 MR. FRIEDMAN: Best evidence, hearsay, incompleteness.

4 Obviously, this one is not that important, but I would
5 prefer if the Court could reserve ruling until we have all the
6 foundation and we can argue it as one set of documents,
7 whatever that set turns out to be.

8 THE COURT: It's more likely than not different as to
9 different documents, don't you think?

10 MR. FRIEDMAN: I think we may have the same arguments
11 as to all of them. What you have here is, I assume, something
12 somebody typed out.

13 THE COURT: What I have here is past recollection
14 recorded of what the label on each of the folders was or bound
15 volumes was, right?

16 MR. FRIEDMAN: Yes.

17 THE COURT: So what is the problem with that?

18 MR. FRIEDMAN: None I guess. I will let it go.

19 THE COURT: It's received.

20 (Plaintiff's Exhibit 4129 received in evidence)

21 BY MR. BRODSKY:

22 Q. Mr. Blank, the fiscal there, Dr. Carlos Jimenez T., do you
23 recall whether you met him at the prosecutor's office on
24 November 18, 2013?

25 A. No, I don't recall if I specifically met a Dr. Carlos

DBP8CHE4

Blank - direct

1 Jimenez T.

2 MR. BRODSKY: May I approach, your Honor?

3 THE COURT: Yes.

4 Q. Mr. Blank, approximately how many pages were in each of
5 those volumes?

6 A. There were approximately 50 to 75 pages in each of those
7 volumes.

8 Q. During your review, did you observe the name Milton Jaque
9 Tarco?

10 A. Yes.

11 Q. Where did you observe that name?

12 A. I recall seeing that name in the beginning of the report,
13 where it was discussed that the report was a forensic report
14 concerning PC 1 and PC 2, as well as providencias.docx, in
15 accordance with the court order, as well as within the
16 conclusion section next to a signature block.

17 Q. Approximately how many pages were there between the
18 beginning of this document and the signature block containing
19 the name of Milton Jaque Tarco?

20 A. There were about 40 pages.

21 Q. Did any of the volumes include attachments to this report?

22 A. Yes, they were labeled anexos.

23 Q. Did you say anexos?

24 A. Yes, I did.

25 Q. Approximately how many anexos or attachments were there?

DBP8CHE4

Blank - direct

1 A. There were approximately eight anexos.

2 Q. Did you copy all of the volumes of the report and the
3 attachments?

4 A. No, I did not.

5 Q. Why not?

6 A. I was not given permission to do so.

7 Q. Did there come a time when you were permitted to copy any
8 part of the report and its attachments?

9 A. Yes.

10 Q. Were you able to copy the entire report and attachments at
11 some point or a portion of them.

12 A. I was only permitted to copy a portion of them.

13 MR. BRODSKY: May I approach, your Honor?

14 THE COURT: Yes.

15 Q. I am showing you, Mr. Blank, what is marked as Plaintiff's
16 Exhibit 4125A, which is a 24 page document. Would you take a
17 moment to look at it, please?

18 Do you recognize this, Mr. Blank?

19 A. Yes, I do.

20 Q. How do you recognize this document?

21 A. This is the document I saw in the prosecutor's office.

22 Q. How do you recognize this very one marked Plaintiff's
23 Exhibit 4125A for identification as the one that you saw in the
24 prosecutor's office?

25 A. This one I observed printed and then initialed as such on

DBP8CHE4

Blank - direct

1 the bottom.

2 Q. How were these pages copied from -- withdrawn.

3 Did you identify these pages for copying or scanning?

4 A. Yes.

5 Q. How did you identify them if they were in Spanish?

6 A. With the help of the translator while in the prosecutor's
7 office.

8 Q. How were these pages copied?

9 A. These particular pages were copied with the help of
10 Mr. Andocilla using his scanner.

11 Q. How do you know Mr. Andocilla scanned them?

12 A. I observed Mr. Andocilla scanning these pages.

13 Q. Was that with the permission or without the permission of
14 the prosecutor's office?

15 A. This occurred with the permission of the prosecutor's
16 office.

17 Q. How do you know the prosecutor's office gave permission to
18 scan these pages in 4125A for identification?

19 A. After identifying certain pages to be scanned, I asked
20 Mr. Andocilla if we had permission to do so. He spoke with an
21 official in the prosecutor's office in the same room as myself.
22 After he returned and told me that we had approval to do so,
23 the report was walked over to the official's desk and the
24 scannings were done in front of the official in the
25 prosecutor's office.

DBP8CHE4

Blank - direct

1 Q. Were you and the other three people you went with to the
2 prosecutor's office ever alone with these bound volumes or was
3 there always someone from the prosecutor's office present?

4 A. There was always at least one other person at the
5 prosecutor's office present with us and the documents.

6 Q. After the pages were scanned, what happened to the pages
7 after they were put on the scanner that Mr. Andocilla had?

8 A. I copied them to my computer while in the prosecutor's
9 office.

10 Q. Was that your laptop computer?

11 A. Yes, it was.

12 Q. Did you bring that laptop back with you to the United
13 States?

14 A. Yes.

15 Q. Did you observe the images that were scanned in the
16 prosecutor's office being printed in New York?

17 A. Yes.

18 Q. Did you initial them right after they were printed?

19 A. Yes.

20 Q. Approximately how many sections were there to the report?
21 Setting aside the attachments, approximately the 40 pages, how
22 many sections were there?

23 A. There are approximately eight sections of the report.

24 Q. What sections, if any, did you copy in 4125A for
25 identification?

DBP8CHE4

Blank - direct

1 A. I copied sections 3 and 4, as well as 6 and 7. There are
2 portions of additional sections, but those I copied in their
3 entirety.

4 Q. When you say portions of additional sections, which section
5 are you talking about, section or sections?

6 A. There is a portion of section 5 visible in the scans, as
7 well as the beginning of the conclusion section, section 8.

8 Q. What was section 1 of the report?

9 A. Section 1 was an introductory section to the report.

10 Q. What was section 2?

11 A. To the best of my recollection, section 2 concerned
12 definitions concerning the digital forensic terminology.

13 Q. Directing your attention to page 4 of 4125A, does that
14 contain a portion of section 5?

15 A. Yes. This is a portion towards the end of section 5.

16 Q. Describe generally what section 5 contained.

17 A. Section 5 contained photos of the computers, PC 1 and PC 2
18 and the hard drives, as well as hash values concerning their
19 acquisition, forensic acquisition.

20 Q. When you say photographs of the computers and the hard
21 drives, do you mean externally, a photograph of the external
22 part of the computer and the external part of the hard drive?

23 A. That's correct. There were photos of the computer cases
24 and of the outside of the hard drives.

25 Q. The hash values, is that contained in the pages that you

DBP8CHE4

Blank - direct

1 were able to scan?

2 A. Yes. That is one of the hash values that is present in
3 section 5.

4 Q. How did you decide what to scan?

5 A. I first attempted to scan -- I first asked to scan the
6 entire report.

7 Q. What happened when you asked to scan the entire report?

8 A. After speaking with Mr. Andocilla, and he spoke with the
9 official at the prosecutor's office, they denied my request to
10 scan the entire report.

11 Q. Then what happened?

12 A. Then with the help of the translator, we reviewed the
13 report looking for information concerning the analysis, as well
14 as the screen shots covering the file or system metadata
15 available in the report.

16 Q. What happened next?

17 A. After identifying these screen shots and pages within the
18 report that contained verbose information that would have been
19 difficult to type or transcribe by hand, we asked -- I'm sorry,
20 I asked Mr. Andocilla if I could get a scan of these pages, and
21 he in turn asked the official at the prosecutor's office who
22 gave approval to do so.

23 Q. Did Mr. Andocilla scan all of the screen shots with
24 metadata in the approximately 40 page report, some of them or
25 otherwise?

DBP8CHE4

Blank - direct

1 A. All of the screen shots containing file metadata within the
2 report were scanned by Mr. Andocilla while in my presence.

3 Q. Are they all contained within 4125A for identification?

4 A. Yes.

5 Q. Let me direct your attention to page 8 of 4125A for
6 identification, screen shot number 2. Is that an example in
7 the red boxes of metadata?

8 A. Yes. This is an example of metadata.

9 MR. BRODSKY: We offer 4125A.

10 MR. FRIEDMAN: Your Honor, I would make the same
11 objections that we made before the break as to these.

12 THE COURT: In and of itself this is meaningless,
13 right?

14 MR. FRIEDMAN: Well, I think Mr. Lynch would disagree
15 with that.

16 THE COURT: But unless he is permitted to give us that
17 disagreement, it's meaningless, isn't it?

18 MR. FRIEDMAN: I don't know if it's meaningless or
19 not. I can't make meaning of it.

20 THE COURT: We are on the same team here.

21 MR. FRIEDMAN: But at this point, what we do know is
22 it is an incomplete document. So the same objections. I don't
23 want to belabor it, but the same objections I made this
24 morning.

25 THE COURT: I am going to reserve decision on that.

DBP8CHE4

Blank - direct

1 MR. BRODSKY: May I approach, your Honor?

2 THE COURT: Yes.

3 Q. I am showing you, Mr. Blank, Plaintiff's Exhibit 4125 for
4 identification. I would ask you to turn to page 27 through
5 page 50. Are those a shrunk down version of 4125A?

6 A. Yes, it is.

7 MR. BRODSKY: We offer 4125 as the English
8 transcription of 4125A.

9 THE COURT: I will reserve decision on that.

10 MR. BRODSKY: May I approach one more time, your
11 Honor?

12 THE COURT: You may.

13 Q. I am showing you, Mr. Blank, Plaintiff's Exhibit 8075A for
14 identification. Do you recognize this one?

15 A. Yes, I do.

16 Q. How do you recognize it?

17 A. This is anexo 5 from the forensic report that I saw in the
18 prosecutor's office in Ecuador.

19 Q. How did you obtain a portion or all of anexo 5?

20 A. Again, as I did with the other sections, I asked through
21 Mr. Andocilla the prosecutor's office for permission to scan or
22 photograph the section. I received approval to do so, and this
23 section I photographed with my camera while Mr. Andocilla held
24 the pages open on the desk of the official at the prosecutor's
25 office.

DBP8CHE4

Blank - direct

1 Q. Was that in the presence of an official from the
2 prosecutor's office?

3 A. Yes, there was someone there.

4 Q. Whose camera took these photographs?

5 A. My camera.

6 Q. You took the photographs?

7 A. Yes.

8 Q. On these photographs there is a date October 18, 2013
9 embedded in each of the photographs. Is that the correct date
10 or the incorrect date when these photographs were taken?

11 A. That date is incorrect.

12 Q. What was the correct date again?

13 A. The date was November 18, 2013.

14 Q. Why was there an incorrect date embedded in each of the
15 photos?

16 A. Because my camera was set with an incorrect date when I
17 took these pictures.

18 Q. How do you know these photographs right here are the ones
19 that you took on November 18, 2013 in the prosecutor's office?

20 A. I recognize these pictures by sight, and I observed them
21 printed.

22 Q. Did you initial them and date when the photo was taken on
23 each page?

24 A. Yes, I initialed and dated them on the bottom right.

25 Q. Generally describe what are these photographs of in 8075A

DBP8CHE4

Blank - direct

1 for identification.

2 A. These photographs are of a Windows log file API containing
3 information by USB device connections.

4 Q. Does this contain all of the USB device connection
5 information in the report and the attachments or only part of
6 it?

7 A. This is the entirety of anexo 5 for this attachment for
8 this USB device log.

9 MR. BRODSKY: We offer 8075A.

10 MR. FRIEDMAN: Same objection.

11 THE COURT: Reserved.

12 MR. BRODSKY: May I approach, your Honor?

13 THE COURT: You may.

14 Q. I am showing you, Mr. Blank, 8075 for identification. Do
15 you recognize it?

16 Let me stop you there. Bad question. Let me ask you
17 to turn to page --

18 MR. BRODSKY: This is just the English translation.

19 THE COURT: Any objection other than the ones I am
20 reserving over and over on?

21 MR. FRIEDMAN: No.

22 MR. GOMEZ: No.

23 THE COURT: You're offering it. I reserve.

24 Does that satisfy everybody for the time being?

25 MR. FRIEDMAN: Yes.

DBP8CHE4

Blank - direct

1 THE COURT: Let's move it along.

2 BY MR. BRODSKY:

3 Q. If you turn to 4125A, Mr. Blank, let me direct your
4 attention to page 11, screen shot number 7.

5 Prior to coming to court today, did you compare screen
6 shot number 7, the language in there, with Plaintiff's Exhibit
7 429?

8 MR. BRODSKY: Which maybe we can ask Randall to put up
9 on the screen in evidence, the first page of 429.

10 Q. Prior to coming to court today, did you compare the two,
11 Mr. Blank?

12 A. I compared screen shot 7 to a Spanish language version of
13 what appears to be 429.

14 Q. You looked at the Spanish language of 429?

15 A. Yes, I believe so.

16 Q. How did they compare, the Spanish language section of 429
17 with the screen shot number 7 on page 11 of 4125A?

18 A. The two documents were similar. They contained
19 approximately five sections that I identified that were
20 somewhat different.

21 Q. When you say five sections, do you mean five words or five
22 parts?

23 A. Five parts, groupings of words or phrases that had differed
24 between the two in what is visible.

25 Q. Did you see screen shot number 7 on page 11 of 4125A

DBP8CHE4

Blank - direct

1 anywhere else in the report or its attachments?

2 MR. FRIEDMAN: I would object. I think this witness
3 was offered to -- what we were told was that he was simply
4 going to lay a foundation for documents, not express opinions.

5 THE COURT: I think so.

6 Why not, Mr. Brodsky?

7 MR. BRODSKY: That's totally fine. The document
8 speaks for itself, 429 and page 11.

9 THE COURT: Let's move it along.

10 Q. My question, Mr. Blank, is, did you see, your own personal
11 observation, on November 18, 2013, the language in screen shot
12 number 7 on page 11 of 4125A anywhere else in the report or its
13 attachments?

14 A. Yes.

15 Q. Where was it?

16 A. It was contained within anexo 6 within the report.

17 Q. Approximately how many pages were in anexo 6 of the report?

18 A. Approximately 200 pages.

19 Q. Let me direct your attention then to screen shot number 9
20 on the next page, page 12 of 4125A.

21 Did you see the language in screen shot number 9
22 elsewhere in the report or its attachments on November 18,
23 2013?

24 A. Yes.

25 Q. Where did you see it?

DBP8CHE4

Blank - direct

1 A. Also in anexo 6.

2 Q. Did that part come after or before the document beginning
3 with screen shot number 7?

4 A. Text contained in screen shot 9 came after that within
5 screen shot 7.

6 Q. How many pages was the document in anexo 6 reflected in
7 screen shot number 7, approximately?

8 A. The text within screen shot 7 went for approximately 24
9 pages before the text within screen shot 9 began.

10 MR. BRODSKY: No further questions, your Honor.

11 THE COURT: Thank you.

12 Mr. Friedman.

13 MR. FRIEDMAN: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. FRIEDMAN:

16 Q. Mr. Blank, my name is Rick Friedman.

17 I wanted to ask you, who were the people from Kroll
18 who were with you when you visited the prosecutor's office?

19 A. There was an individual named Juan Felipe Sanchez and
20 Jimmy -- forgive me if I misspeak his last name - Augusto.

21 Q. What was your understanding as to their purpose being
22 there?

23 A. They were there to assist me in the interpretation and
24 understanding of the Spanish language in the report.

25 Q. Mr. Andocilla, did he speak English?

DBP8CHE4

Blank - cross

1 A. No. Mr. Andocilla did not speak English.

2 Q. It was your understanding that he was Mr. Guerra's lawyer?

3 A. Correct.

4 Q. Did you understand -- let me ask it this way.

5 Was it your role as you understood it to help

6 Mr. Guerra in his defense of the criminal case?

7 A. No, that was not my understanding.

8 Q. What was your understanding as to why Mr. Guerra's lawyer
9 was permitting you to look at these documents or taking you to
10 look at these documents?

11 A. I was not aware of the relation prior to my arrival. I
12 only understood him to be facilitating my access to review the
13 report.

14 Q. Who is your supervisor on this project?

15 A. My direct supervisor at Stroz or with Gibson Dunn?

16 Q. Both.

17 A. My supervisor at Stroz Friedberg is Bryan Rose, and my
18 supervisor with Gibson Dunn is Chris Spiker.

19 Q. Who was it that directed you to go to Ecuador on this
20 mission?

21 A. The initial request came directly from one of my managers
22 Lance Nudd.

23 Q. Who was it that gave you your instructions on what you were
24 to do?

25 A. My instructions came from Chris Spiker.

DBP8CHE4

Blank - cross

1 Q. What did Mr. Spiker tell you that he wanted you to do?

2 A. He asked that I initially attempt to obtain a full copy of
3 the report, and barring that, I spoke with him about his
4 priorities in terms of what sections or what aspects of the
5 report were of most interest.

6 Q. At the time you spoke with him, did you have an
7 understanding of how long or how big the report was?

8 A. I understood the report to be a few hundred pages, but not
9 much else was told to me about the report.

10 Q. Did you have any time limitations -- let me ask it this
11 way. You said you were there about six hours?

12 A. That's correct, about six hours.

13 Q. So did you have an opportunity then to look through all the
14 annexes?

15 A. Not in their entirety, I did not look through all of the
16 annexes.

17 Q. Which ones did you look through, or did you look through
18 any of them?

19 A. I did look at all of the headings of the annexes. And I
20 did look at, for what I could in the time allotted, portions of
21 anexo 6, anexo 5, and anexo 7.

22 Q. Was there a particular reason you selected those three to
23 look at as opposed to the others?

24 A. Yes.

25 Q. What was the reason?

DBP8CHE4

Blank - cross

1 A. Anexo 5 contained details about USB device connections. It
2 contained information about time stamps of the machine's use.

3 Anexo 6 was what I understood to be a
4 providencias.docx.

5 Q. That is ones you looked at?

6 A. Yes. Anexo 7 was told to me to be the sealed or final
7 version of the judgment contained within anexo 6.

8 Q. What were in annexes 1 through 4?

9 A. Annexes 1 through 4, I know that one contained a chain of
10 custody, though I cannot recall what the others contained.

11 Q. Did you say there were eight all together?

12 A. Yes. There were approximately eight.

13 Q. So what did annex 8 contain?

14 A. I do not recall what annex 8 contained.

15 Q. Did you take any notes while you were there?

16 A. Yes.

17 Q. Did you bring those with you here today to court?

18 A. No, not in their entirety, no.

19 Q. Parts of them?

20 A. Parts of them, yes.

21 Q. What did you bring?

22 A. I brought one of the pages of notes I have.

23 Q. Do you have that with you up on the stand or where would
24 that be?

25 A. No.

DBP8CHE4

Blank - cross

1 MR. BRODSKY: We are happy to provide Mr. Friedman
2 with these notes.

3 MR. FRIEDMAN: Thank you.

4 Q. Could you give us a better idea of how you spent the six
5 hours?

6 A. Certainly. The report was very difficult to follow. It
7 took some time working with the translator to understand what
8 information would be found where in the report. Other times
9 there would be a discussion between Mr. Andocilla and the
10 prosecutor's office while it was decided whether or not we
11 could photograph or scan certain pages of the report. Overall
12 it was a difficult and slow proceeding to work through the
13 report.

14 Q. Did you attempt to copy any of the annexes?

15 A. Yes. I did request a copy of all the annexes.

16 Q. Were you allowed to copy any of them?

17 A. I was only permitted to take photos of anexo 5.

18 Q. Was any information communicated to you about why certain
19 parts you were permitted to copy and other parts you weren't
20 permitted to copy?

21 A. No. I was not made aware what the restrictions were that
22 permitted me or did not permit me to make copies.

23 Q. Was it your personal camera that you used to take the
24 photographs?

25 A. It was the camera that's assigned to me through Stroz

DBP8CHE4

Blank - cross

1 Friedberg.

2 Q. Assigned to you as what you use in your work or in your
3 professional capacity?

4 A. Yes.

5 Q. You have used it in the past?

6 A. Yes, I have.

7 Q. When was the time most recently before this that you
8 used -- before your trip to Ecuador, when was the time that you
9 had recently used the camera?

10 A. Within a month prior.

11 Q. Was the date set wrong in that month prior as well?

12 A. Most likely it was, yes.

13 Q. When you took the photographs for that prior job, did you
14 notice the date was wrong?

15 A. No, I did not.

16 Q. How many trips have you made to Ecuador?

17 A. That was my first trip to Ecuador.

18 Q. I am not sure that I heard you. I apologize if I got this
19 wrong. Did you say that section 5 of the report dealt with
20 photos of the external parts of the computers?

21 A. Yes. To the best of my recollection, section 5 contained
22 photos of the outside of the computers.

23 Q. Then you said it had hash values as well?

24 A. Correct.

25 Q. And could you just tell us quickly what a hash value is?

DBP8CHE4

Blank - cross

1 A. Sure. A hash value is a unique value assigned to a series
2 of bytes, that should any of those bytes in that series change
3 or be rearranged, the hash value will ultimately change.

4 Q. How many sets of hash values were there in section 5?

5 A. There were at least one per computer, one set of hash
6 values per computer.

7 Q. When you say at least, are you saying that there might have
8 been more?

9 A. Oftentimes in forensic acquisitions, multiple types of hash
10 values are produced per acquisition per machine.

11 Q. You don't recall today whether there were more hash values
12 in section 5?

13 A. No, I do not.

14 Q. Were there hash values in the various annexes?

15 A. I cannot say one way or the other. I cannot recall.

16 Q. Have you presented to us today every page that was scanned
17 during your visit to the prosecutor's office?

18 A. Yes, every page that I scanned was presented here.

19 Q. Likewise, have you presented every photograph that was
20 taken during your time with the prosecutor?

21 A. Yes. All the photos of the report are presented here.

22 (Continued on next page)

DBPLCHE5

Blank - cross

1 Q. Do you still have PX8075A in front of you?

2 A. Yes, I do.

3 Q. And if you look at the numbers in the top right, the
4 handwritten numbers in the top right hand of this exhibit, was
5 it your understanding that these were page numbers?

6 A. They did appear to be page numbers. However, I recall them
7 not being entirety consistent and I did not, I did not rely
8 upon them.

9 Q. All right. To the best of your memory, were there 561
10 pages before the page that we have here as the first page of
11 8075A?

12 A. I cannot say one way or the other that I can recall that
13 being the case.

14 Q. Were there pages ahead of this page 562?

15 A. Were there pages following 562?

16 Q. That were before. In other words, did you flip open a book
17 or a document and come to 562?

18 A. Yes, this was not the first page. There were pages before
19 it.

20 Q. Can you give us any estimate as to how many pages ran
21 before this?

22 A. At least three or 400 pages.

23 Q. And if we talk about the end of this exhibit is I guess
24 583, were there pages after 583 in the document you were
25 reviewing?

DBPLCHE5

Blank - cross

1 A. After this document, after anexo 5 there were pages in the
2 report, yes.

3 Q. And can you estimate for us how many pages came after?

4 A. There were approximately three additional anexos following.
5 I'm not entirely sure.

6 Q. All right.

7 MR. FRIEDMAN: Can I have just a second, your Honor.

8 Q. Mr. Blank, are you in a position to tell us today whether
9 the annexes you looked at contained other screen shots of
10 metadata other than what you've presented to us today?

11 A. To the best of my recollection, no, there were no other
12 screen shots of metadata in the annexes.

13 Q. And when you say other, as I understand it, what you've
14 shown us today does not contain photographs of screen shots
15 from the annexes; is that right?

16 A. Correct. The photos, the scans that are presented today
17 are from the report.

18 Q. All right. And were there screen shots of metadata in the
19 annexes?

20 A. I don't recall seeing any screen shots of metadata in the
21 annexes.

22 MR. FRIEDMAN: Your Honor, before I conclude, I wonder
23 if I could look at Mr. Blank's notes.

24 THE COURT: Yep.

25 MR. FRIEDMAN: Thank you.

DBPLCHE5

Blank - cross

1 MR. BRODSKY: Does he want to do it right now?

2 THE COURT: Yes.

3 MR. BRODSKY: I can try to locate them in the back.

4 THE COURT: In the meantime, is Mr. Gomez going to
5 have any examination of the witness?

6 MR. GOMEZ: Yes.

7 THE COURT: All right. Then we'll come back to you if
8 we need to.

9 MR. FRIEDMAN: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MR. GOMEZ:

12 Q. Good afternoon, Mr. Blank.

13 Sir, you testified under questioning that the report
14 was difficult to read. Is that correct?

15 A. Yes.

16 Q. What made it so difficult to read?

17 A. That it was in Spanish and I don't have a understanding of
18 the Spanish language.

19 Q. Did you, in order for the translators to explain to you the
20 contents of the report, did they have to flip back and forth
21 through the annexes?

22 A. They had to flip back and forth through the report,
23 certainly.

24 Q. Do you recall them flipping back and forth through the
25 annexes to interpret the report to you?

DBPLCHE5

Blank - cross

1 A. They did flip through the annexes, yes.

2 MR. GOMEZ: I have nothing further.

3 THE COURT: Thank you.

4 Mr. Brodsky, anything else?

5 MR. BRODSKY: No, your Honor.

6 THE COURT: All right. We'll take, well, we'll hold
7 off on that.

8 Just tell me the next witness would be who and what is
9 the person going to say.

10 MR. BRODSKY: Your Honor, what we can do before the
11 next witness is offer a stipulation to your Honor. It's the HP
12 stipulation from Daniel -- testimonial stipulation of what
13 Daniel McGuire would say. It's marked as Plaintiff's
14 Exhibit 7097. He works at Hewlett Packard and he provides
15 business record, essentially, information regarding the serial
16 numbers and the tracking of two serial numbers of PC1 and PC2.

17 MR. FRIEDMAN: And we've signed it, your Honor.

18 MR. GOMEZ: Yes, we signed it.

19 THE COURT: So Plaintiff's Exhibit 7097 is received.

20 (Plaintiff's Exhibit 7097 received in evidence)

21 THE COURT: And I take it that eliminates the second
22 witness for the afternoon and what remains then is Mr. Lynch;
23 is that right?

24 MR. MASTRO: Correct, your Honor.

25 MR. BRODSKY: Yes, your Honor.

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Blank - cross

1 THE COURT: Okay. Now, have you received yet --

2 MR. FRIEDMAN: No.

3 THE COURT: -- notes?

4 MR. FRIEDMAN: No, your Honor.

5 THE COURT: All right. We'll take our break now. And
6 how long do you expect to be with Mr. Lynch? And I may make a
7 ruling that may affect that.

8 MS. NEUMAN: Less than an hour, your Honor.

9 THE COURT: All right. What does the defense
10 anticipate in terms of cross?

11 MR. BOOTH: Depends on a lot, depends on what they
12 cover and what your rulings are, your Honor. I would think
13 less than half an hour.

14 THE COURT: You heard preliminarily what I was
15 thinking about, case A and case B. Case A is it all comes in;
16 case B is it's limited to the declaration.

17 MR. BOOTH: I would think half an hour or less. That
18 would be my prediction.

19 THE COURT: As to case A, case B, or both?

20 MR. BOOTH: Longest.

21 THE COURT: Longest. Thank you.

22 MR. BRODSKY: Your Honor, I know you're stepping off
23 but just, your Honor, I'd like to ask you to keep in mind with
24 respect to Mr. Blank's testimony, the metadata certainly isn't
25 hearsay and what he testified to was all the metadata was

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Blank - cross

1 captured.

2 THE COURT: Listen, I was listening.

3 MR. BRODSKY: Understood, your Honor.

4 THE COURT: I really do pay attention.

5 MR. BRODSKY: Thank you, your Honor.

6 MR. MASTRO: Thank you, your Honor.

7 (Recess)

8 THE COURT: Okay. Anybody have any last new word they
9 want to add before I rule on the question with respect to
10 Mr. Lynch and the scope of his testimony?

11 MR. FRIEDMAN: Actually, your Honor, there are a
12 couple more questions for Mr. Blank that I think might be
13 relevant based on his notes.

14 THE COURT: Oh, okay. Let's get the notes marked.

15 MR. FRIEDMAN: Mark them as DX1901, your Honor.

16 THE COURT: DX1901.

17 CROSS-EXAMINATION

18 BY MR. FRIEDMAN:

19 Q. Mr. Blank, is DX1901 a copy of your notes?

20 A. Yes.

21 Q. And do I understand correctly you took handwritten notes
22 and then somebody typed them up later?

23 A. I did have some handwritten notes that I later that evening
24 typed up.

25 Q. And who typed them up for you?

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Blank - cross

1 A. I typed them up.

2 Q. And did you type up all your notes or just a portion?

3 A. No, I had some shorthand notes that I then turned into full
4 sentences, but this is the entirety of my notes.

5 MR. FRIEDMAN: Your Honor, I'd move for admission of
6 1901.

7 MR. BRODSKY: No objection, your Honor.

8 THE COURT: Received.

9 (Defendant's Exhibit 1901 received in evidence)

10 MR. FRIEDMAN: That's all the questions.

11 Q. Actually, I did want to ask you, Mr. Blank, then if no
12 one -- am I correct no one translated the entire report for
13 you; is that correct?

14 A. Correct. Nobody translated the entire report for me.

15 Q. You would ask questions about a specific heading or a
16 specific sentence and then the translators would try to answer
17 your question?

18 A. Either I would ask questions about a specific heading or
19 sections or vice versa. I'd ask the translator to help me in
20 finding something within the report which I believed to be
21 there.

22 Q. And you did work with one translator or a particular person
23 or both or two of them?

24 A. There was one translator with me.

25 Q. All right. And if you wanted to get an understanding let's

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Blank - cross

1 say of a particular sentence, would -- and that translator had
2 to flip around to look for things, you would rely upon him to
3 find what you needed; is that correct?

4 A. Oftentimes there would be numbers involved and I'd be
5 looking over his shoulder, working with him to find what we
6 were looking for.

7 Q. All right. And were you restricted by the prosecutor in
8 terms of content -- let me start there -- in terms of content
9 or were the restrictions some other sort?

10 THE COURT: That would presuppose knowledge of what
11 was in the head of the prosecutor.

12 Q. Let me ask it this way: Did you stay there as long as you
13 wanted to?

14 A. I stayed there as long as I was allowed to stay there.

15 Q. At some point you were told it was time to leave?

16 A. Correct.

17 MR. FRIEDMAN: And I think I'll leave it at that.
18 Thank you, Mr. Blank.

19 THE COURT: Thank you.

20 Any further examination of the witness by anybody?

21 MR. BRODSKY: No, your Honor.

22 THE COURT: Mr. Gomez?

23 RE CROSS EXAMINATION

24 BY MR. GOMEZ:

25 Q. Sir, who told you it was time to leave, who gave you that

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Blank - recross

1 instruction, was it Mr. Andocilla or was it the interpreter?

2 A. It was not the interpreter. It was Mr. Andocilla
3 explaining that we had to leave. It was towards the end of
4 their day.

5 Q. Did he explain why it was time to leave?

6 A. No, he did not make it clear why it was time to leave,
7 other than there were people clearly getting ready to leave the
8 office around that time.

9 Q. When you were taking the photographs, was someone from the
10 fiscalia examining what pages you were photographing as you
11 were taking them?

12 A. Yes. It was on his desk in front of him.

13 Q. I don't know what you mean. What was on his desk?

14 A. The report was on the prosecutor official's desk while we
15 were taking pictures of it and he was present.

16 THE COURT: You know, this is an opportunity to
17 examine with respect to the notes, Mr. Gomez. You finished
18 your cross earlier.

19 MR. GOMEZ: Nothing further, your Honor.

20 THE COURT: Thank you.

21 Anything else?

22 MR. BRODSKY: No, your Honor.

23 THE COURT: All right. The witness is excused. Thank
24 you.

25 THE WITNESS: Thank you, your Honor.

DBPLCHE5

Blank - recross

1 (Witness excused)

2 MR. BRODSKY: With respect to your prior question,
3 your Honor, I would like your Honor to consider, your question
4 before if I have any questions for Mr. Blank, I would like your
5 Honor to consider Plaintiff's Exhibit 7086, which I'm handing
6 up copies of, your Honor considers the ruling.

7 It is a press release issued in connection by
8 Mr. Fajardo and others associated with him issued in connection
9 with Mr. Tarco's report and it reflects that Mr. Fajardo is
10 talking about the contents of the report and is stating that
11 the report in his view supports with detail, some detail about
12 it, such as the hours, the 3,571 hours they claim Zambrano's
13 computer reflects his use, his writing of the judgment, it
14 reflects that they have access to it and they are making
15 statements in support of the fact that the report corroborates
16 Judge Zambrano and undermines, in their view, former Judge
17 Guerra.

18 In our view, these are statements in furtherance of
19 the conspiracy to cover up what their fraud in connection with
20 the judgment.

21 THE COURT: I'm sorry, which are the statements in
22 furtherance?

23 MR. BRODSKY: Mr. Fajardo's statements, essentially,
24 and of the report itself was in furtherance of the cover-up.

25 Your Honor, the reason for that is, to connect the

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1 dots, Mr. Fajardo initiated the criminal complaint against
2 Mr. Guerra. Mr. Fajardo then initiates the forensic
3 examination. It's Mr. Fajardo here talks about the results of
4 that forensic examination. And the defense here submits
5 Mr. Tarco's declaration with perhaps the intent to -- with
6 their stated intent to call Mr. Tarco in support of Judge
7 Zambrano's testimony and the contents of the report itself
8 conflict with Mr. Tarco's declaration.

9 And it's our view the metadata within Mr. Tarco's
10 report, as Mr. Lynch would testify, is inconsistent with Judge
11 Zambrano's testimony and Mr. Tarco's own declaration offered in
12 this case but then withdrawn.

13 MS. NEUMAN: Your Honor, may I?

14 THE COURT: No, you may not.

15 Mr. Friedman.

16 MR. FRIEDMAN: Your Honor, all I was going to ask you
17 to do is if you would just take a moment to look at DX1901, the
18 five bullet points on the bottom I think further support the
19 arguments we made to you this morning.

20 THE COURT: All right. I may well revise what I'm
21 about to say, the rationale for the ruling, but the bottom line
22 is this. So much of the proposed testimony of Mr. Lynch
23 depends on the report in the prosecutor's office in Ecuador I'm
24 not going to entertain.

25 I think there are some extremely strong arguments for

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1 taking it. There's absolutely no question that the defense had
2 access to it long ago. Plaintiff's Exhibit 7086 is a press
3 release in which Mr. Fajardo spoke in some detail about the
4 contents of this report. The defense has known since at least
5 as early as October 24 that they intended to call Mr. Tarco.
6 It was obvious that the report was going to be a key focus of
7 that. I could well imagine an appellate court taking a
8 different view of the propriety of allowing Mr. Lynch to
9 testify on this subject, even in light of the fact that we do
10 not have the full report before us.

11 I think Mr. Blank, although he obviously acknowledges
12 that there are parts of the report he didn't copy, has made
13 clear that to the extent that he reviewed it over the course of
14 this six-hour period, he copied and took away with him all of
15 the metadata that was in the report. And in my understanding,
16 Mr. Lynch's opinion, to the extent it rests on the report,
17 rests on the metadata.

18 Nonetheless, I've concluded that I'm going to exclude
19 it because I am concerned about allowing the testimony to come
20 in based on an incomplete document, and I'm especially
21 concerned about that in light of the fact that Mr. Blank is not
22 a Spanish speaker and, thus, was dependent on others for the
23 narrative content of the report as distinct from screen shots
24 of things like metadata which would have been readily
25 understandable to him.

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1 So all in all, I agree with the defense as to opinions
2 based on the report for those reasons, possibly others which I
3 may elaborate on later, but that's sufficient for now.

4 Now, that leaves the other part of the report, most
5 notably -- I misspoke. That leaves Mr. Lynch's testimony based
6 on Tarco's declaration.

7 The first argument the defense puts is it's not proper
8 rebuttal. Zambrano was called by the plaintiff, concededly as
9 a hostile witness, but called by the plaintiff nonetheless and,
10 thus, if they had anything else to say about Mr. Zambrano's
11 testimony, it should have been said on plaintiff's case in
12 chief.

13 The first point I would make about that is that the
14 order of proof is entirely within the discretion of the
15 district judge, and there are substantial considerations that
16 militate against the defendants' view on this.

17 One consideration is that the defense, in order to
18 avoid Mr. Zambrano returning on the defense's case in chief,
19 sought leave and was granted leave to examine him as their
20 witness, as well, when he was on the stand. Thus, Mr. Zambrano
21 to that extent was offered as part of the defense case, as well
22 as part of the plaintiff's case.

23 But there are other considerations and the other
24 considerations support the same conclusion. To begin with, it
25 is a mistake to focus on this as rebuttal to Mr. Tarco, which

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1 it isn't because he didn't testify, or as rebuttal to
2 Mr. Zambrano alone. You have to have in mind the whole
3 chronology of the way this case developed at trial and that
4 chronology is this.

5 On October 24, the defense made a motion to expand
6 their witness list to allow them to call Mr. Tarco, and it was
7 in support of that motion that Mr. Tarco's affidavit or
8 declaration was put in.

9 Six days later, on October 30, they made another
10 motion on that occasion to expand their witness list to include
11 Ms. Calva, and it was on that motion that they put in a
12 declaration or an affidavit from Ms. Calva.

13 Both of these witnesses were said to be necessary, in
14 substance, to corroborate the defense view of Mr. Zambrano's
15 story. The statements of both witnesses, Tarco and Calva, were
16 put before the Court to induce the Court to grant relief to the
17 defense.

18 And on November 4, at page 1395 of the trial
19 transcript, they prevailed on that. Seeing the potential
20 importance of the testimony of both of those witnesses, I
21 allowed them to expand their witness list. I reiterated that
22 in a written order on November 5, docket item 1681.

23 We then get into the trial testimony and how this all
24 developed.

25 On November 5, Mr. Zambrano testified at pages 1679

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1 and -80 that the judgment was typed on the new computer in his
2 office because it was the more modern one. He added that at
3 some point while he was working on the judgment, the old
4 computer was removed from his office for maintenance, thus
5 leaving for some indeterminate period only one computer that
6 could possibly have been worked on.

7 Then at pages 1683 and -84, he testified that while he
8 was working on the judgment, Ms. Calva conducted internet
9 searches for him on the new computer. She is the only one who
10 did internet searches on that computer that he used in drafting
11 the judgment.

12 He testified at 1658 and -59 that she was working at
13 the new computer that he received from the judicial council
14 that was in his office, not the old computer. He didn't use
15 the old computer or no one used the old computer at all for
16 typing the judgment.

17 He testified at 1679 that the entire writing of the
18 judgment was done on the new computer.

19 Now, we then move forward to November 7, by which time
20 I had granted the defense leave to bring Mr. Tarco and
21 Ms. Calva on the defense case.

22 Mr. Mastro said at pages 2012 and -13, on November 7,
23 that the only other witness Chevron had to call was Dr. Lipton
24 and he would testify on the 14th during the defense case
25 because he wasn't available earlier.

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1 Mr. Mastro then added, The only other proviso on that,
2 your Honor, is it's not clear to us whether certain of the
3 Ecuadorian witnesses like Mr. Tarco are coming here or not.
4 Whether he comes here or not might affect whether we will need
5 to call an additional witness. I take that to be a reference
6 also to Ms. Calva. That was at pages 2012 to -13.

7 On November 11, Armistice Day, Veteran's Day, the
8 defense finally informed -- and I'm not faulting them; I'm just
9 simply saying this is when it happened -- that the defense no
10 longer intended to call Mr. Tarco.

11 On the following day Mr. Mastro said, and I'm
12 referring to pages 2052 to -53, Last night we learned for the
13 first time that they -- meaning the defense -- have withdrawn
14 Mr. Tarco as a witness, but it's still their intention to call
15 Ms. Calva. We will have a rebuttal case in response to what
16 has been said by Mr. Zambrano, Mr. Tarco, and Ms. Calva.

17 I responded, If Tarco is not a witness, how do you
18 have a rebuttal case to that? Essentially the argument the
19 defense is making now.

20 Mr. Mastro responded in part that they were going to
21 show that his declaration was incorrect, but he then added as
22 follows: We'll be explaining why Mr. Zambrano's testimony
23 cannot be the case. And Ms. Calva is still to appear, so we'll
24 be explaining why her anticipated testimony, that is to say,
25 what her declaration or affidavit said, cannot be the case.

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1 I interjected that we'd deal with that whenever it
2 came up.

3 Mr. Mastro responded, I simply wanted to make the
4 point, excuse me, to make the point, your Honor, instead of
5 continuing our case to rebut these points now when they still
6 say they intend to call Ms. Calva, we do intend to present
7 certain rebuttal evidence in that regard.

8 And at that point Mr. Friedman confirmed that Tarco
9 was not going to be called.

10 Now, in all of the circumstances here, it seems to me
11 as follows. Chevron was led to believe until after it had
12 rested, subject to the calling of Dr. Lipton, that Tarco would
13 be a witness on the defense case and even later than that that
14 Ms. Calva would be a witness on the defense case.

15 I think in those circumstances that it was entirely
16 appropriate for them, even if they knew earlier what Mr. Lynch
17 was going to say, to withhold the rebuttal about what went on
18 in Mr. Zambrano's office with the new computer and the old
19 computer and so forth until they had the whole case on that
20 proposition, two pieces of which, apparently important pieces,
21 at least so I thought which is why I granted the defense leave
22 to call the witnesses, Mr. Tarco and Ms. Calva were yet to come
23 and then the defense decided not call them.

24 Now, I'm not accusing the defense of having
25 deliberately misled anybody, but the objective here is entire

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1 fairness all around. And it seems to me that it was perfectly
2 appropriate decision for Chevron to delay rebuttal until the
3 defense case was in. They did. It would be manifestly unfair
4 to deprive them of the limited opportunity I'm giving them, and
5 it is very limited compared to what it is they have asked for,
6 to respond to what Mr. Zambrano said on the new computer/old
7 computer proposition.

8 The only piece of Mr. Lynch's proposed testimony that
9 remains standing in light of my ruling for the defense here
10 this afternoon is the piece that depends on paragraphs, if I
11 remember correctly, five and 13 of Mr. Tarco's declaration. I
12 identified it earlier and if I'm mistaken now, I did so
13 accurately earlier. It has to do with the serial numbers of
14 the two computers.

15 And the foundation evidence is all in now, and I think
16 I don't overstate to say that the defense substantially
17 conceded, subject to the rebuttal or nonrebuttal part of this,
18 that that's really not controversial anyway, but, of course,
19 the record will speak for what they said. And so I'm going to
20 allow that small piece of it.

21 I would indicate also that if it were an issue, and
22 I'm not sure that it is at this point -- correct me if I'm
23 wrong -- those two little pieces of Tarco's declaration,
24 there's no contest that his statements about the serial numbers
25 and which computer the providencias.docx file was found on, the

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1 admissibility of those facts is not an issue.

2 Right, Mr. Friedman?

3 MR. FRIEDMAN: Your Honor, if I'm understanding what
4 you said, the admissibility of that remains to be seen. But if
5 you were asking us to stipulate to that --

6 THE COURT: What I was doing was giving you my
7 understanding that you effectively had conceded it earlier, but
8 if I'm mistaken, please correct me.

9 MR. FRIEDMAN: Well, Mr. Tarco's declaration says
10 what -- I don't have in my mind, your Honor, the actual serial
11 numbers and all that. Mr. Booth has been working on that.

12 But the concept that Mr. Lynch, given your ruling that
13 they're allowed rebuttal, yes, we agree, Mr. Tarco's
14 declaration can be something Mr. Lynch relies upon.

15 THE COURT: To the extent of the serial numbers and
16 the presence of the providencias.docx file on a particular
17 computer, right?

18 MR. FRIEDMAN: Well, I think there's, at least in my
19 mind having looked at this, there's confusion about which
20 computer it's on. So, I don't think I can agree with the
21 Court, but I see where you're going. I think Mr. Lynch will
22 say what he's going to say on that issue and Mr. Booth will
23 cross-examine him.

24 THE COURT: Do you want to add to this, Mr. Gomez?

25 MR. GOMEZ: No, your Honor. I just think there's not

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1 enough information at this time to take a position one way or
2 the other. The declaration we received we in good faith
3 submitted. But without a complete record, there's no way to
4 verify the accuracy. Mr. Tarco would have testified. His
5 understanding and recollection in his declaration would have
6 been tested. It would have gone one way or the other and the
7 problem is we just don't have that here.

8 THE COURT: Okay. Let's go.

9 MS. NEUMAN: Your Honor, if I may be heard, Mr. Lynch
10 does have an opinion also on paragraph 14 of Mr. Tarco's
11 declaration which relates to the edit time of providencias.docx
12 and how it conflicts or doesn't conflict. Ultimately, it
13 conflicts with Mr. Zambrano's described usage of the computer.

14 And then I understand your Honor's ruling, but I would
15 ask for leave to ask Mr. Lynch just two authenticating
16 questions as to one page of the Tarco report on which the file
17 metadata appears, and I'll make an offer of proof to the Court.

18 THE COURT: Look, you can ask the question, and I
19 imagine there may be an objection, and if there is, I'll rule
20 on it. I may understand it a lot better then than I do now.

21 MS. NEUMAN: Thank you, your Honor.

22 THE COURT: Okay. So let's go forward. I view this
23 as quite narrow.

24 SPENCER LYNCH,

25 called as a witness by the Plaintiff, in rebuttal,

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1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. NEUMAN:

4 Q. Good afternoon, Mr. Lynch.

5 A. Good afternoon.

6 Q. Welcome back.

7 A. Thank you.

8 Q. Do you still have on the witness stand PX4125A, sir?

9 A. I do, yes.

10 Q. Could you turn to page 13.

11 A. Okay.

12 Q. Is there information on page PX4125A -- withdrawn.

13 Did you review, Mr. Lynch, a declaration of Mr. Tarco
14 filed in this matter that's been marked as Exhibit 6371?

15 MS. NEUMAN: May I approach, your Honor?

16 THE COURT: Yes.

17 A. Yes, I reviewed this before.

18 Q. And exhibit, Plaintiff's Exhibit 6371 is a declaration of
19 Mr. Tarco that you reviewed and relied upon?

20 A. Yes.

21 MS. NEUMAN: Plaintiff would move in 6371, your Honor,
22 not for the truth.

23 MR. BOOTH: We object to this.

24 THE COURT: And the ground?

25 MR. BOOTH: Hearsay.

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1 THE COURT: It's not offered for the truth. Next.

2 MR. BOOTH: Then I'm at a loss. I don't know what it
3 could be used for if not for the truth. Your Honor, I
4 apologize. He is going to rely on the truth of the statements,
5 I suppose, to contradict another witness. I don't know how we
6 can do that.

7 THE COURT: Let's find out if that is the case.

8 MR. BOOTH: Well, in addition, your Honor, this was a
9 declaration. This was not his witness statement. This was
10 declaration we filed with the court to get permission to bring
11 the witness. This was not a witness statement, and so we would
12 object on those grounds. Thank you.

13 THE COURT: I'm going to receive it subject to a
14 motion to strike if it's not connected up, not for the truth of
15 the matters asserted unless a subsequent offer is made for that
16 purpose or a part of it. I'll rule on that if, as, and when it
17 happens.

18 (Plaintiff's Exhibit 6371 received in evidence)

19 Q. Mr. Lynch, do you still have Plaintiff's Exhibit PX4125A in
20 front of you?

21 A. I do, yes.

22 Q. And what is your understanding of that document?

23 THE COURT: Oh, please. Come on, Ms. Neuman.

24 MR. BOOTH: Objection, your Honor.

25 THE COURT: What is your understanding of the

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1 Encyclopedia Britannica.

2 MS. NEUMAN: I'll ask a more precise question.

3 Q. Is there metadata that's provided in the Tarco declaration
4 PX6371 that also appears on page 13 of PX4125A?

5 MR. BOOTH: Objection. Discussion of this document
6 you ruled not in evidence, your Honor.

7 THE COURT: Overruled given the previous ruling.

8 Please answer the question.

9 A. Yes. The screen shot on the top of page 13 has metadata
10 for a file named providencias.docx that is also reflected in
11 the declaration marked 6371.

12 Q. And how do you know that the metadata in the two documents
13 is the same?

14 A. By comparing them. 6371 states that the file -- in
15 paragraph 13 states that the file providencias.docx was created
16 on October 11, was last modified March 18, and it states the
17 date it was last opened was September 10, 2012.

18 The screen shot in 4125A on the top of page 13
19 reflects a document named providencias.docx with a creation
20 date of October 11, 2010, a last access date of September 10,
21 2012, and a modification date of March 18, 2011.

22 Q. And are there any hash values contained on the screen shot,
23 screen shot 10 on page 13 of PX4125A?

24 A. Yes. There are two hash values that appear about
25 two-thirds of the way down the screen shot for the file

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1 providencias.docx.

2 Q. And if you look at screen shot 11, is there a matching hash
3 value appearing in screen shot 11?

4 MR. BOOTH: Same objection, document not admitted, not
5 allowed to rely on.

6 THE COURT: Sustained. What's the point of this?

7 MS. NEUMAN: Authenticating the screen shots, your
8 Honor.

9 THE COURT: I understand that. But if it says cow at
10 the top of the page and it says cow at the bottom of the page,
11 I don't need an expensive expert witness to tell me that it
12 says cow in both places, right?

13 MS. NEUMAN: Your Honor, may I have a side bar?

14 THE COURT: All right. Quickly.

15 (At the side bar)

16 MS. NEUMAN: Your Honor, this screen shot contains the
17 file system metadata that matches the Tarco declaration that
18 the defendants submitted. It has a hash value. This screen
19 shot contains the document metadata. It has a hash value.
20 Mr. Lynch will testify that based on the hash values, he knows
21 both sets of metadata to have come from the same file.

22 THE COURT: Look, I made a ruling here and that is
23 that to the extent his testimony rests on this report, it's not
24 coming in.

25 MS. NEUMAN: I just --

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1 MR. MASTRO: We'll go on, your Honor.

2 (In open court)

3 BY MS. NEUMAN:

4 Q. Mr. Lynch, did you do any forensic analysis since you last
5 testified relating to Judge Zambrano's testimony and the Tarco
6 declaration, excluding the Tarco report?

7 A. Yes, I have.

8 Q. Could you describe the focus of your recent analysis.

9 A. Yes. I analyzed Mr. Zambrano's testimony that about how he
10 described the process of drafting the judgment on the new
11 computer against the forensic information provided in the Tarco
12 declaration.

13 Q. And did you read the entirety of Mr. Zambrano's deposition
14 testimony?

15 A. I did, yes.

16 Q. Did you read the entirety of Mr. Zambrano's trial
17 testimony?

18 A. I did, yes.

19 Q. Were there particular portions of Mr. Zambrano's testimony
20 that you as a forensic examiner focused on?

21 A. Yes, and I created a slide showing some of those sections.

22 Q. Can we put Plaintiff's Exhibit 4128 for identification on
23 the screen, please.

24 A. First, Mr. Zambrano described that he would arrive at the
25 office between 6 a.m. and 7 a.m., would stay until 11 or later,

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1 that he had two desktop computers, one from the time he became
2 a judge and a second computer that was issued after the court
3 equipment was renewed, that he shut down both of his computers
4 every night and that he turned on his computers when he arrived
5 in the morning.

6 And then on the next slide, that him and his typist,
7 he would dictate to his typist and she would arrive at eight in
8 the morning and work until noon and then go to lunch and then
9 return and work until six or later, that the entire judgment
10 was drafted on his new computer, that he worked several
11 weekends, and that while he was working using the new computer,
12 the old computer was taken away for maintenance.

13 Q. Were there also specific portions of the Tarco declaration,
14 Exhibit PX6371, that you focused on?

15 A. Yes, and I actually also created a slide of those. First
16 Mr. Tarco described there were two machines and that one of
17 them had a serial number MXJ64005TG.

18 MR. BOOTH: Your Honor, I object to this. It sounds
19 to me like they're relying on this for the truth. He's relying
20 on it for factual evidence that he's now using to form an
21 opinion which to me sounds like the truth. I can't think of
22 anything else it would be.

23 THE COURT: Well, look, Ms. Neuman, first of all, I
24 was wrong in referring a moment ago to paragraphs 5 and 13. I
25 meant 5 and 10. You've zeroed in on exactly what I was talking

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1 about.

2 Are you offering the quoted sentences from PX6371 from
3 paragraphs 5 and 10?

4 In the first case the sentence, or two sentences,
5 actually, the first machine CPU used by Dr. Zambrano has serial
6 number MXJ64005TG and was labeled in our analysis as PC02. The
7 second machine used by Dr. Zambrano has serial number
8 MXL038123D and was labeled PC01. That's paragraph 5.

9 And then the sentence or sentences from paragraph 10,
10 on the hard drive from computer PC02 we found a file named
11 providencias.docx which contains several hundred pages and it
12 continues for two more sentences.

13 Now, are you offering that for the truth? If you're
14 not, on what basis are you proceeding?

15 MS. NEUMAN: We're offering it for the truth, your
16 Honor, that that is the computer on which Mr. Tarco in his
17 signed declaration states that he found providencias.docx and
18 that that is the serial number of the computer that he looked
19 at.

20 THE COURT: All right. And what's your position,
21 Mr. Booth?

22 MR. BOOTH: I'm sorry.

23 THE COURT: You have something to say?

24 MR. BOOTH: I was actually reading over his shoulder
25 because Ms. Littlepage was talking to me while she was talking.

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Lynch - direct

1 THE COURT: Read over his shoulder. I could never
2 read over his shoulder from that distance.

3 MR. BOOTH: Your Honor, we would object, hearsay.
4 It's being offered for the truth. It's a hearsay document and
5 we believe it should not be admitted for the truth. It
6 shouldn't be admitted at all and certainly not for the truth is
7 our position.

8 THE COURT: Ms. Neuman.

9 MS. NEUMAN: These are admissions, your Honor. They
10 were offered by the defendants as accurate statements, and
11 they're also coconspirator statements to the extent Mr. Tarco
12 is participating in the cover-up.

13 THE COURT: I'm not satisfied on the second point.

14 Mr. Booth, what's the response to the argument that by
15 putting the Tarco declaration before the Court it's an
16 admission?

17 MR. BOOTH: He's not our agent, your Honor, and I
18 don't believe putting forward a statement of what a witness, a
19 factual witness that we hope to call, putting forth a
20 declaration to the Court of what we understand the factual
21 witness knows so that the Court can make a decision on allowing
22 us to amend the witness list means that we adopt what the
23 factual witness has put in the factual witness's statement.

24 THE COURT: It was not a statement of your
25 understanding of what he knew. It was a sworn statement by the

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Lynch - direct

1 witness.

2 MR. BOOTH: Right, your Honor.

3 THE COURT: And you put it before me for what purpose?

4 MR. BOOTH: We put it before you so that you would see
5 and we could show the parties and the Court what this witness
6 purported to talk about as we understood it because we don't
7 have the factual information he has. He has that factual
8 information. So we didn't want to tell the Court this is what
9 we think, so we had him do a declaration which we then provided
10 to the Court.

11 I don't think that has us adopting the factual
12 statements of that witness. He's not our expert. We have not
13 put forward an expert opinion by this person as an expert.
14 We're putting forth a factual witness.

15 MR. GOMEZ: If I may add, your Honor, nor could we ask
16 the Court to adopt that statement. We would have to bring that
17 witness here to testify.

18 I would suggest, your Honor, that if we were asking
19 the Court without this witness to accept this declaration
20 because it favored us, after everything that's happened, that
21 the plaintiffs would be arguing very strongly that it shouldn't
22 come in for the truth if they thought it actually favored the
23 defendants.

24 THE COURT: Ms. Neuman.

25 MS. NEUMAN: Well, your Honor, they obtained this

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Lynch - direct

1 declaration from Mr. Tarco. They had him sign it under penalty
2 of perjury. They offered it to the Court. Under Rule 11 it
3 had to be offered in a good faith basis. I think having made a
4 representation to the Court after having obtained a declaration
5 signed under penalty of perjury that this is what Mr. Tarco
6 would testify to and that that's why he should be allowed to
7 come here and testify as a witness in their case that they did
8 adopt his statements in his -- the factual statements in his
9 declaration. And which computer he looked at and what serial
10 number that computer had is certainly included within those, as
11 is the nature of the document that he found on that computer.

12 I don't think this is the same as if we were objecting
13 to it due to a lack of ability to cross-examine. They were
14 able to discuss whatever they wanted to discuss with Mr. Tarco
15 before they had him sign a declaration and submitted it to this
16 Court. They now can't complain that they didn't get to
17 cross-examine their own witness before his statements are used
18 against them.

19 MR. BOOTH: Your Honor, I think there's a distinction
20 between something -- the concept that we would adopt the
21 statement of any witness whose evidence we would put before
22 you, I've never heard of such thing. We do not adopt the
23 factual statements of witnesses we bring to the Court,
24 certainly not a declaration that he did that we brought to you
25 in that fashion.

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1 I understand there could be times when you can adopt
2 the statement of an agent, can adopt the statement of an
3 expert, but that is not this circumstance. We didn't file this
4 to support some factual argument in summary judgment. We
5 simply were notifying the Court of what this person told us in
6 a declaration he would be able to testify to and we brought
7 that to the Court and the parties.

8 THE COURT: That's not exactly right. You submitted
9 this to the Court for the purposes of persuading me that
10 notwithstanding the fact that you had never identified him as a
11 witness previously, I should grant you dispensation from the
12 requirement that you have done so because the testimony was
13 material, important, and you should have the opportunity to
14 call him.

15 Not only that, you made that application after your
16 Mr. Fajardo and your Mr. Piaguaje had access to the full
17 report, after obviously somebody on the defense side of the
18 case had reached out to this individual and had persuaded him,
19 first of all, that he should give you a sworn statement under
20 penalties of perjury in the United States and, secondly, that
21 he should voluntarily appear here on your behalf for the
22 purpose of testifying.

23 Now, did you do that believing that what he was going
24 to say would be false?

25 MR. BOOTH: Absolutely not, but I would have no way of

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Lynch - direct

1 knowing that, your Honor.

2 THE COURT: Well, your clients did.

3 MR. BOOTH: My client is Steven Donziger. My client
4 is not anybody else. And I can tell you Steven Donziger didn't
5 have anything to do with any of this.

6 So this was something that I and we, these lawyers
7 here with me, the two representing Mr. Donziger, myself, we
8 believed this witness had factual knowledge. He does not speak
9 the same language I speak and vice versa. I understood he had
10 evidence about the computers. We got, we asked him to do a
11 declaration because the Court would need that and the parties
12 would need that. We presented that to the Court not having any
13 idea if he was right, wrong, or in between and that's what we
14 did. And now the concept that we've adopted this I don't think
15 fits within any part of the law.

16 THE COURT: Two days before you made your motion,
17 according to Plaintiff's Exhibit 7086, maybe more, maybe three
18 or four days before, Mr. Fajardo issued a press release stating
19 that Tarco's report destroys the arguments by Chevron in this
20 regard. Think that's relevant?

21 MR. BOOTH: Your Honor, not to be flip, but not to me.
22 Mr. Fajardo is not my client. I have absolutely no control
23 over anything he does in any manner, shape, or form. And I
24 don't know, I certainly say it's irritating, but I don't know
25 that his statements in Ecuador in a press release impact

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Lynch - direct

1 whether this witness can rely on something that I provided to
2 the Court by a fact witness that I hoped would come and be able
3 to testify factually and I relied on him to make that
4 declaration.

5 THE COURT: Would you have put it forward if his
6 testimony was going be that Zambrano had lied as proven by the
7 forensic evidence?

8 MR. BOOTH: Would I have brought a witness that was
9 going to prove the case against me?

10 THE COURT: That's my question.

11 MR. BOOTH: I don't want to speculate, but I don't
12 think I would bring a witness.

13 THE COURT: I wouldn't think so either.

14 So you thought he was a good witness for you, that he
15 was going to back up your side of the case, and that's why you
16 put the affidavit before me to get permission to call this good
17 witness.

18 MR. BOOTH: Yes, your Honor. And I can tell you a
19 hundred times where I've been wrong putting a witness on the
20 stand and they say something bad and everybody says that was
21 Booth's witness. That doesn't mean Booth adopts what the
22 witness says.

23 THE COURT: That's not the test. It's not the test.
24 We do have rules of evidence and they matter sometimes. And
25 this one says that a statement is not hearsay if it is offered

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Lynch - direct

1 against an opposing party -- that would be your client and
2 Mr. Gomez's clients -- and the statement is one that the party
3 manifested that it adopted -- that's your word -- or believed
4 to be true. That's the second part.

5 Now, unless you're prepared to stand here, both of
6 you, and tell me that you were calling this witness to give
7 testimony that neither of you believed was true, it seems to me
8 that quite possibly the rule reads right on the money on this.

9 (Continued on next page)

DBP8CHE6

Lynch - direct

1 MR. BOOTH: Sorry, your Honor.

2 THE COURT: That's all right. It's important that we
3 all get this right.

4 MR. BOOTH: Your Honor, I do not believe that this
5 rule applies to me. I do think that if there were a
6 circumstance, for example, in response to a summary judgment
7 motion or to support a summary judgment or something where I am
8 asserting to you the facts of this statement supports a legal
9 statement, that is certainly one thing. And I think under
10 those circumstances I would be manifesting my belief that the
11 facts are actually true, and I would be manifesting that I have
12 adopted those facts. I can see under those circumstances being
13 bound by such an adoption.

14 THE COURT: Nobody is talking about bound.

15 MR. BOOTH: But by adopting it, it's coming in under
16 my name. All I am saying to you is, I did not have any belief
17 this was an untrue statement, but I would have had no ability
18 to verify as true or untrue what this man put in a declaration.
19 I assume that he is going to sign something under penalties of
20 perjury. I assume that if he is a man who works in the
21 judicial system down there, that he would be truthful.

22 What I did was I got a factual witness to do a
23 declaration to bring to the Court. I did not do anything that
24 separately represents to the Court I believe it's true, or that
25 I believe that it was adopted by me. But I did want the Court

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Lynch - direct

1 to know what this witness says he knows, I wanted the parties
2 to know what he says he knows, and I wanted the Court to
3 consider letting me call this witness. Then I would have met
4 him, had his words translated, prepared a witness statement,
5 and put him on the stand. But none of that happened. So I
6 just don't believe this rule applies to me -- not to me, but to
7 this circumstance.

8 THE COURT: If memory serves, Chevron's brief on this
9 motion you made to strike the anticipated testimony challenged
10 the defense as follows: If you don't believe what Tarco said
11 in the declaration, why don't you say so?

12 MR. BOOTH: Judge, I didn't not believe it. I didn't
13 have any ability to believe or not. I never met the man. I
14 have never seen the computers. I have never seen any of these
15 things that have now come in today. I have never seen his
16 report beyond today. I have never had a conversation with him.
17 I have no ability to make a judgment. But I have a fact
18 witness who knows things about the computers. He lives in
19 Ecuador. We didn't list him. We wanted the Court to allow us
20 to bring that fact witness. So we got him to do a declaration.
21 I wanted the Court to know what he says he knows. But it's not
22 me telling you that's what he knows. I am telling you that's
23 what he says, and I want to bring him as a witness. That's not
24 the same thing as me adopting the facts and making them
25 essentially mine through me telling you I know they are true,

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Lynch - direct

1 because I don't know they are true. I have no reason to think
2 they are false, but I cannot tell you they are true. Even
3 standing here today I can't tell you that.

4 THE COURT: Well, I understand your argument.

5 Ms. Neuman, any last thing on this?

6 MS. NEUMAN: I would just add, your Honor, that both
7 Mr. Donziger and the labs have an agent in Ecuador for Mr.
8 Fajardo who has access to the report, and it hasn't been
9 represented whether or not he was involved in obtaining this
10 declaration, but he certainly can verify the facts for counsel
11 before they presented it, presumably in good faith after
12 appropriate diligence.

13 THE COURT: Well, I am going to hear the testimony,
14 and I will eventually rule. And you're welcome to brief the
15 adopted admission point. It seems to be where the rubber meets
16 the road on this. And I will be very interested to see what
17 both sides have to say on that.

18 Let's go ahead and let's try to finish this witness
19 this afternoon.

20 MS. NEUMAN: Yes, your Honor.

21 MS. NEUMAN: May I approach?

22 THE COURT: Yes, you may.

23 BY MS. NEUMAN:

24 Q. Mr. Lynch, do you have Exhibit 4108 in front of you?

25 A. I do, yes.

DBP8CHE6

Lynch - direct

1 Q. Is this a document that you relied on in forming your
2 opinion?

3 A. It is, yes.

4 THE COURT: Could I have a copy, please?

5 I have 4110.

6 MS. NEUMAN: They are bundled together for efficiency
7 but not in order.

8 THE COURT: All right.

9 Q. Mr. Lynch, for what purpose did you rely on Plaintiff's
10 Exhibit 4108?

11 A. To identify the computers assigned to Mr. Zambrano.

12 Q. Were you able to do that using Exhibit 4108?

13 A. Yes, I was.

14 Q. Can you explain?

15 A. 4108 --

16 MR. BOOTH: Objection. This is hearsay. I would
17 object to hearsay and no authentication that it even is what it
18 purports to be.

19 THE COURT: So far he didn't say what it said.

20 MR. BOOTH: I thought he was about to.

21 THE COURT: I can understand being over anxious. Been
22 there myself.

23 Next question.

24 MS. NEUMAN: We would move the admission of 4108, 4109
25 and 4110 as foreign Apostille documents under 902, subparagraph

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Lynch - direct

1 3.

2 THE COURT: OK. Mr. Booth, your turn.

3 MR. BOOTH: Pass. Judge, I don't even know what that
4 means.

5 THE COURT: It means it's got a little official
6 doohickey that says this is an official record down here in
7 Ecuador, which takes care of the authenticity problem, I think,
8 subject to your views.

9 We are all getting quite a lesson in foreign judicial
10 documents here.

11 MR. BOOTH: I am so happy about that as well.

12 THE COURT: It's one of those things that you just
13 have to have when you practice law in the United States.

14 MR. BOOTH: I would argue foundational hearsay. I
15 don't know this rule. I did not see anything which triggered
16 that in my mind, and I apologize.

17 THE COURT: No apology is necessary.

18 MR. BOOTH: I feel like I probably should know the
19 answer to this, but I don't.

20 THE COURT: 902(3) seems to cover the case.

21 That's what you rely on, right, Ms. Neuman?

22 MS. NEUMAN: Yes, your Honor.

23 THE COURT: Are the technical requirements satisfied
24 in 902(3)?

25 MS. NEUMAN: Yes, your Honor. These documents have

DBP8CHE6

Lynch - direct

1 all been Apostilled in Ecuador.

2 THE COURT: I always thought Apostille was a noun.

3 MR. BOOTH: The only thing I would say is I was just
4 pointed to the point where it says, if all parties have been
5 given a reasonable opportunity to investigate.

6 THE COURT: If all parties have been given an
7 opportunity, then you don't need the little doohickey.

8 MR. BOOTH: He pointed that to me.

9 THE COURT: Good. He is on his toes.

10 So it's authentic.

11 Now, let's explore hearsay. Are you still making that
12 objection?

13 MR. BOOTH: Yes.

14 THE COURT: If memory serves, it's 803(8).

15 Now, these documents purport to be and are, in view of
16 the ruling on authenticity, records from the Provincial Office
17 of the Judicial Council of Sucumbios province of the delivery
18 of furniture and/or office equipment to Judge Zambrano.

19 I think it obviously on the face of it sets out a
20 record of the office's activities, right, the furniture
21 activity?

22 MS. NEUMAN: Yes, your Honor.

23 THE COURT: Anybody dispute that the Provincial Office
24 of the Judicial Council is under a legal duty to keep track of
25 where they assign the furniture and the office equipment?

DBP8CHE6

Lynch - direct

1 MR. BOOTH: I don't dispute that.

2 THE COURT: Is there any reason to conclude that
3 either the source of the information, to wit, the Provincial
4 Office of the Judicial Council, or other circumstances indicate
5 that their records of who they assigned the equipment to are
6 not trustworthy?

7 MS. NEUMAN: I am not aware of any.

8 MR. BOOTH: I am not aware of any, your Honor.

9 It's pointed out to me that this was signed in October
10 21, 2013. I would use this to again assert that I don't
11 believe this is true rebuttal. This is information that was in
12 their possession before, and certainly not something that just
13 happened, and could have been handled in their case in chief.
14 It would have given us a chance before we got this on Friday to
15 look at the issue. I don't have any more than that to say
16 about it.

17 THE COURT: Overruled. They are received, 4108, 9 and
18 10.

19 (Plaintiff's Exhibits 4108, 4109 and 4110 received in
20 evidence)

21 BY MS. NEUMAN:

22 Q. In addition to the Ecuadorian office inventories,
23 Mr. Lynch, did you review the testimonial stipulation from
24 Hewlett Packard?

25 A. Yes, I did.

DBP8CHE6

Lynch - direct

1 Q. Taking that information together, the office inventories
2 and the Hewlett Packard stipulation, were you able to develop a
3 timeline as to when Judge Zambrano had possession of his old
4 computer?

5 A. I did, yes, and I prepared a graphic showing the timeline.

6 MS. NEUMAN: Can we put that graphic up, please?

7 Q. Mr. Lynch, could you walk us through the timeline for Mr.
8 Zambrano's old computer as you determined it to be?

9 THE COURT: What exhibit is this timeline?

10 MS. NEUMAN: It was a page of Mr. Lynch's
11 demonstrative which were marked for identification.

12 THE COURT: So it's page 5 of that. What was the
13 exhibit?

14 MS. NEUMAN: I'm sorry. I lost track of the first
15 page.

16 4128. We will have to remove some of the pages,
17 however, your Honor, because the slide deck included opinions
18 on the declaration.

19 THE COURT: So this is page 5 of 4128 for
20 identification, correct?

21 MS. NEUMAN: Yes, your Honor.

22 A. The old computer had serial number MXJ 64005 TG. It was
23 manufactured by HP October 5, 2006. And then Mr. Zambrano
24 signed for that computer on December 30, 2008, as per one of
25 the office inventories. It appears again on office inventory

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Lynch - direct

1 for March 10, 2011. And then finally on the final office
2 inventory from April 25, 2012, when Mr. Zambrano turned in his
3 equipment after being dismissed as a judge.

4 Q. Mr. Zambrano and Mr. Tarco we notice in your earlier slides
5 use different terminology. Mr. Zambrano talks about his old
6 computer and his new computer. Mr. Tarco discusses PC 01 and
7 PC 02. Have you identified how the old/new computer
8 terminology corresponds to the PC 01, PC 02 terminology?

9 A. Yes. The old computer Mr. Zambrano referred to was
10 identified by Mr. Tarco as PC 02.

11 Q. How do you know that?

12 A. The serial numbers match.

13 Q. Were you also able to determine the history of the new
14 Zambrano computer?

15 A. Yes, I was. And I have a slide walking through a timeline
16 of that as well.

17 Q. That would be page 6 of Exhibit 4128 for identification.

18 MS. NEUMAN: Can we put that up, please?

19 A. The new computer was manufactured by HP on September 27,
20 2010, was shipped to Miami on October 15, 2010, arrived in
21 Miami on October 21, 2010, and then was purchased by the
22 judicial council on November 26, 2010.

23 Then appears on an office inventory from March 10,
24 2011. And then finally, like the old computer, was turned in
25 when Mr. Zambrano turned in his equipment after being dismissed

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Lynch - direct

1 as a judge.

2 Q. In terms of the Tarco terminology, is the new computer PC
3 01 or PC 02?

4 A. The new computer is PC 01.

5 Q. In his declaration filed with the Court, on which Zambrano
6 computer, old or new, did Mr. Tarco state a document containing
7 text very similar to the judgment was found?

8 A. Mr. Tarco stated that the document containing text very
9 similar to the judgment was found on the old computer.

10 Q. Having analyzed Mr. Zambrano's testimony about how the
11 judgment was drafted, can you forensically reconcile the
12 finding of providencias.docx with the old computer with Mr.
13 Zambrano's sworn testimony?

14 A. No, I cannot.

15 Q. Why not?

16 A. First, Mr. Zambrano testified that he created the judgment
17 exclusively on the new computer. At least from the Tarco
18 declaration, the only copy referenced of the judgment, or text
19 similar to the judgment, was found on the old computer. Per
20 the Tarco declaration, that copy was created on October 10,
21 which is before the new computer was even shipped to Miami and
22 well before it was purchased by the judicial council.

23 Q. So am I correct that Mr. Tarco found the providencias.docx,
24 the judgment-like document on the old computer, whereas Mr.
25 Zambrano testified he drafted it on the new computer?

DBP8CHE6

Lynch - direct

1 A. Yes, that's correct.

2 Q. Did Mr. Tarco state the amount of edit time that
3 providencias.docx had in his declaration?

4 A. Yes. He stated it has 3,571 hours.

5 Q. Does edit time accumulate from a file creation date or an
6 embedded creation date?

7 A. It accumulates from the embedded creation date, when the
8 document was created.

9 Q. Did Mr. Tarco provide a creation date in his declaration?

10 A. His declaration wasn't clear as to what date he was
11 providing, but it appeared to be a file system date.

12 Q. What creation date did he provide?

13 A. It's not clear. It appears to be a file system date.

14 Q. What was the actual date?

15 A. It is October 11.

16 Q. Is that date, if it's a file system date, relevant to
17 determining the time period during which edit time can
18 accumulate?

19 A. The embedded edit date is what dictates the edit time. But
20 absent that, the only date I have is the file system date.

21 Q. If the date in the Tarco report for the create date is the
22 embedded system date, would the --

23 THE COURT: Ms. Neuman, aren't you going beyond my
24 ruling, even if the defense is not objecting?

25 MS. NEUMAN: This is limited to information in the

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Lynch - direct

1 declaration, your Honor.

2 THE COURT: Where?

3 MS. NEUMAN: We can go to that.

4 Q. Mr. Lynch, did you do an analysis of the judgment, Exhibit
5 399, to determine the percentage of quoted material?

6 A. I did, yes.

7 Q. What did you determine?

8 A. I determined that 30 percent of the words in the judgment
9 appeared in quotes.

10 Q. Did you make that determination using generally accepted
11 methods?

12 A. Yes.

13 Q. I have one more question on edit time.

14 THE COURT: That's confusing. Generally accepted
15 methods?

16 You're just telling me what percentage of the phrases
17 or segments of the opinion had quotation marks around it,
18 right?

19 THE WITNESS: Yes.

20 THE COURT: So there is no generally accepted method
21 beyond looking for where the quotation marks are and counting
22 what comes in between, is that right?

23 THE WITNESS: In some cases there was a hanging quote.

24 THE COURT: You had to sort out the hanging quotes.

25 Q. Mr. Lynch, does edit time accumulate when the computer is

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Lynch - direct

1 off?

2 A. No, it does not.

3 MS. NEUMAN: I pass the witness, your Honor.

4 THE COURT: Mr. Booth.

5 CROSS-EXAMINATION

6 BY MR. BOOTH:

7 Q. Hello, Mr. Lynch. Nice to see you.

8 Does edit time accumulate when the computer screen is
9 turned off but the computer is on?

10 A. It can.

11 Q. The particular computers we are talking about here in Mr.
12 Zambrano's office were desktop computers, correct?

13 A. Yes.

14 Q. Which means they would have had a screen separate from the
15 actual computer thing, right?

16 A. Yes. There is a separate screen and tower.

17 Q. The tower would have an on and off button?

18 A. Yes.

19 Q. This type of tower would have an on and off button?

20 A. Yes.

21 Q. And the screen would have an on and off button?

22 A. Yes.

23 Q. The Tarco declaration that is Plaintiff's Exhibit 6371, is
24 this the type of document you would normally rely on in forming
25 opinions in your professional capacity?

DBP8CHE6

Lynch - cross

1 A. Normally I would have forensic evidence.

2 Q. So normally this type of document with the type of
3 information it contains -- strike all that.

4 The type of information, the quality and the scope of
5 the information in this document, Plaintiff's Exhibit 6371, is
6 that the type of information you would normally rely on in
7 forming opinions?

8 A. The metadata in it and the edit time and user name that
9 appears is of the type that I would normally rely on.

10 Q. But the quality of what is reported, is that the type of
11 quality of evidence you would normally rely on?

12 THE COURT: I think you have to be more specific, Mr.
13 Booth.

14 Q. In looking at this declaration in the past, were you
15 critical of the quality of the information contained in
16 Plaintiff's Exhibit 6371?

17 MS. NEUMAN: Objection.

18 THE COURT: Sustained.

19 As I understand it, he has relied on three pieces of
20 data in here. Data number one is the serial number of computer
21 number one. Data number two is the serial number of the second
22 computer. Data number three is the fact that there was found
23 on the hard drive of computer PC 02 a file named
24 providencias.docx. I don't think he relied on anything else
25 during his testimony.

DBP8CHE6

Lynch - cross

1 MR. BOOTH: Yes, your Honor. Thank you.

2 THE COURT: If I am mistaken, please bring it to my
3 attention.

4 MS. NEUMAN: He did speak to the 3,571 hours of edit
5 time, your Honor.

6 MR. BOOTH: That's where I was going.

7 THE COURT: Yes, I understand he spoke to it, but I
8 wasn't clear that he relied on it. He said when edit time
9 accrues and doesn't, which is not in this declaration, right?

10 MS. NEUMAN: Correct. It just allows an
11 interpretation of the edit time that is in the declaration in
12 conjunction with Mr. Zambrano's testimony.

13 THE COURT: OK. Let's proceed.

14 MR. BOOTH: May I have just a moment?

15 THE COURT: Please.

16 BY MR. BOOTH:

17 Q. Let me ask you about the computers, the computer you called
18 the old computer.

19 A. Yes.

20 Q. That computer, based on the materials you reviewed, would
21 have been in Dr. Zambrano's office between 2008, let's say,
22 sometime during 2008, and when he left the bench in February of
23 2012, is that right?

24 A. Yes.

25 Q. Now, the computer that you called the new computer, the

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Lynch - cross

1 first time that appears on any inventory for Dr. Zambrano's
2 office is March 2011, is that right?

3 A. Yes.

4 Q. It wasn't even purchased until November 26, 2010, right?

5 A. Yes.

6 Q. You don't know when that computer actually made it to Dr.
7 Zambrano's office?

8 A. I do not know.

9 Q. Do you know if Dr. Zambrano had a different new computer in
10 his office on which he typed the sentencia?

11 MR. BOOTH: Strike that.

12 Q. Do you have any way of knowing whether Dr. Zambrano had a
13 different, quote unquote, new computer in his office, other
14 than the two computers you have referenced here in your slides?

15 A. In his testimony he referenced that he had one from when he
16 became a judge and that he received a new one later. At least
17 from his testimony, he didn't reference receiving multiple new
18 computers.

19 Q. In his testimony, the Court will have this, but do you
20 recall whether he referenced a time frame when he had an old
21 one and got a new one?

22 A. He referenced receiving the new one before he began typing
23 the judgment, but he didn't recall the specific time frame.

24 Q. If he received it before he started typing the judgment,
25 and if the file creation date on the system is October 2010,

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Lynch - cross

1 there is no way he got a new computer, this new computer that
2 was not even purchased until November 26, 2010, before he
3 started typing the judgment, right, if my dates are right?

4 A. I am not sure I completely understood the question.

5 Q. The file creation date for the providencias document was
6 October 2010, right?

7 A. Yes.

8 Q. Dr. Zambrano said he used the new computer that he received
9 just before he started typing the judgment, right?

10 A. Yes.

11 Q. If he is right, he would have gotten a new computer before
12 October 2010, right?

13 A. His testimony. The office inventory show and the HP
14 records show that the new computer was still in Miami when he
15 began typing based on the metadata.

16 Q. This new computer -- let's go back.

17 When Mr. Tarco went to Judge Zambrano's office in
18 September of 2012, there were two computers. Is that what you
19 understand to be true?

20 A. In September 2012?

21 Q. Yes. Isn't that when he went to collect the two computers?

22 A. The two computers were turned in after he had been
23 dismissed in April 2012.

24 Q. So in April 2012, Dr. Zambrano had two computers?

25 A. Yes.

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Lynch - cross

1 Q. And how many computers he had before that time, you are
2 relying on inventories, three inventories from the court,
3 correct?

4 A. Yes.

5 Q. And then you're looking at HP documents related to those
6 serial numbers from HP pertaining to those two computers?

7 A. Yes.

8 Q. You cannot say that Dr. Zambrano did not have a different
9 computer that he got in September or October of 2010 that he
10 used that was then replaced by a computer he received in March
11 of 2011, you cannot say that, can you?

12 A. Well, he testified that he worked on the new computer
13 exclusively, and the metadata from the Tarco report shows that
14 the providencias file was created October 11 and last modified
15 on March 18. And the inventory from 2011 showing the computer
16 manufactured and then purchased by the judicial council
17 November 26 was dated in that period; it was March 10. So on
18 March 10 he had the new computer that was purchased by the
19 judicial council November 26.

20 Q. My question is you cannot say, based on what you have in
21 front of you about two computers, you cannot say there was not
22 a third computer that was new to Dr. Zambrano in the fall of
23 2010, which was then replaced by a computer in March of 2011,
24 you cannot say that, can you, sir?

25 MS. NEUMAN: Objection. It assumes facts not in

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Lynch - cross

1 evidence.

2 THE COURT: No, it doesn't. Overruled.

3 A. Beyond his testimony that he had two computers, no, I can't
4 say that he didn't have three computers.

5 Q. That is funny. I heard some people laughing.

6 I guess it's important to look at his testimony for
7 the time frame, correct? We will let the Court look back at
8 his testimony on that issue.

9 THE COURT: Mr. Booth, I am giving you a lot of
10 latitude, but this is not cross-examination. This is argument.

11 MR. BOOTH: Yes, your Honor, it is. It didn't start
12 out that way.

13 Just give me one minute.

14 Q. Last thing, Mr. Lynch. From your review of the declaration
15 and your forensic review of this information, there was a
16 document called providencias that was on a computer in Dr.
17 Zambrano's office, is that true?

18 A. That is true.

19 Q. That had a creation date of October 2010, true?

20 A. True.

21 Q. And that was a computer that was in Dr. Zambrano's office
22 in March of 2011, according to the inventory, correct?

23 A. I'm sorry. The computer containing a file with the text of
24 the judgment?

25 Q. Yes.

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Lynch - cross

1 A. It's the text similar to the judgment, but true, it was in
2 his office March 2011.

3 MR. BOOTH: Thank you.

4 THE COURT: Thank you, Mr. Booth.

5 Mr. Gomez.

6 MR. GOMEZ: Nothing further, your Honor.

7 THE COURT: Thank you.

8 Ms. Neuman.

9 MS. NEUMAN: Yes, your Honor.

10 REDIRECT EXAMINATION

11 BY MS. NEUMAN:

12 Q. A few questions, Mr. Lynch.

13 The October 2010 date in the Tarco report, do you know
14 whether that's the date the document was created or that's the
15 date the document was purportedly put on that computer?

16 MR. BOOTH: Objection.

17 THE COURT: Sustained as to form.

18 Q. Can you tell when providencias.docx was created based on
19 the Tarco declaration?

20 A. Only that a file of that name was purportedly put on the
21 computer on October 11.

22 Q. The Tarco declaration says that providencias.docx was
23 created on the old computer, is that right?

24 THE COURT: It says what it says, Ms. Neuman. This is
25 to be a very narrow examination, limited to opinions based on

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Lynch - redirect

1 the three pieces of data that I articulated before.

2 Now, let's stick with that. You both, quite
3 understandably but nonetheless, I think not usefully, are
4 trying to do your summations through this witness. Let's get
5 it concluded.

6 MS. NEUMAN: Nothing further.

7 THE COURT: Thank you.

8 Anything else?

9 MR. GOMEZ: No, your Honor.

10 THE COURT: Thank you, Mr. Lynch. You're excused.

11 Mr. Mastro.

12 MR. MASTRO: Yes, your Honor.

13 THE COURT: I take it you rest, is that correct?

14 MR. MASTRO: We will have rebuttal exhibits and
15 deposition designations that we will offer to the Court at the
16 same time immediately after Mr. Friedman presents the defense
17 exhibits and deposition designations.

18 It's also the case, your Honor, and we will submit a
19 notice to the Court on this tonight, we still do not have the
20 Moncayo documents off the hard drive, and there have been some
21 privilege assertions, and we still do not have that. So we are
22 going to ask the Court for the ability, once we finally receive
23 those from Mr. Gomez, to potentially supplement the record here
24 with that information.

25 THE COURT: Mr. Gomez, what's the story?

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1 MR. GOMEZ: The story, your Honor, is that the vendor
2 did not provide me access to the hard drive material until
3 yesterday because, as I understand it, because of the various
4 steps that Stroz Friedberg required them to undertake for
5 purposes of indexing the drive.

6 I must admit I haven't had a chance to review any of
7 the hard drive material yesterday and that's my next step. I
8 can say this. Out of the 5,000 files that are on the hard
9 drive, 3,000-some-odd are supposed to be photographs.
10 Yesterday, in the training that I had with the vendor, I was
11 informed that 77 are Word documents only. So I suspect that
12 now that I have access to the material and can start reviewing
13 it, I should get through the review rather quickly. I did get
14 through 1500 --

15 THE COURT: E-mails?

16 MR. GOMEZ: E-mails. And we produced the e-mails that
17 were responsive and nonprivileged. And we have also produced
18 to the plaintiffs a privilege log. So that's been done. And
19 those were Bates numbered from 1 to 1504.

20 MR. MASTRO: There will be some documents from those
21 e-mails that will be part of our rebuttal submission as
22 exhibits, and we have questions we are considering on their
23 privilege log, whether those are really valid privilege
24 objections. But we are waiting for the hard drive documents,
25 which could be a substantial production.

DBP8CHE6

1 THE COURT: There can't be more than 77, unless you
2 want to look at photos of his kids.

3 MR. MASTRO: I am not interested in photos of his
4 kids.

5 THE COURT: I expect a report first thing in the
6 morning.

7 I expect counsel to get all outstanding exhibit and
8 related questions resolved tomorrow afternoon so that by the
9 end of Tuesday, or worst case first thing Wednesday morning,
10 this record is closed.

11 Any reason why that can't be done?

12 MR. FRIEDMAN: No, your Honor.

13 MR. GOMEZ: No, your Honor.

14 THE COURT: Mr. Mastro?

15 MR. MASTRO: There is no reason it can't be done from
16 our perspective.

17 THE COURT: We will have closing argument tomorrow. I
18 have a commitment that requires me to take a lunch break. We
19 may be done by then, but if not, the rebuttal argument may go
20 over to after lunch or be interrupted. Just so you know that
21 for planning purposes, I will have to be gone from between
22 12:45 to 2-ish.

23 The post-trial briefing schedule, I have in mind
24 post-trial submissions by December 23 and replies by January 6,
25 simultaneous exchange both times. It's important that I deal

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1 with this while everything is as fresh in my mind as it's ever
2 going to be. It's not going to get fresher with time and you
3 are all aware I have other commitments.

4 The last thing I have for you this afternoon, I would
5 just like to see counsel at the side bar.

6 (At the side bar)

7 THE COURT: I hope that this is not premature. I am
8 almost done. I appreciate the efforts of all counsel in this
9 trial. It went beyond my expectations, without a doubt, and I
10 don't mean to damn with faint praise. I mean, everybody did
11 their jobs and I am appreciative, and as far as I can see,
12 everybody acted responsibly and you get a lot of credit in
13 difficult circumstances, given the prior histories in this case
14 among counsel.

15 I also wanted to have you all here because I don't
16 want to have an ex parte communication with Ms. Littlepage,
17 even on a matter having nothing whatsoever to do with this
18 case. I am handing Ms. Littlepage a copy of an order I entered
19 today, pretrial order number 469, in *In re Rezulin Products*
20 *Liability Litigation*, because I think the previous order I
21 entered with respect to her has in one respect outlived its
22 usefulness and I appreciate her contribution in this case.

23 MR. FRIEDMAN: Ms. Littlepage and I had planned to
24 split our closings. I wanted to see if that was OK.

25 THE COURT: That's OK.

DBP8CHE6

1 MR. MASTRO: We will do everything we can to complete
2 it before lunch, your Honor.

3 (Adjourned to November 26, 2013, at 9:30 a.m.)
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7033A 2701

7000 2701

1406A 2702

1758 2716

7086 2718

4129 2751

1 7097 2774
2 6371 2792
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1900 	2676
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